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National Credit Union Administration

July/1980

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National Credit Union Administration Rules and Regulations

NCUA 8006

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NATIONAL CREDIT UNION ADMINISTRATION

RULES AND REGULATIONS

TRANSMITTAL SHEET

NEWARK PUBLIC LI

CHANGE: 2

NCUA 8006 (M3500)

DATE: February 2,1981

NOV 2 1981

U. S. GOVT. PUBS.
DEPOSITORY 376

TO: THE BOARD OF DIRECTORS OF THE FEDERAL CREDIT UNION OR THE FEDERALLY INSURED CREDIT UNION ADDRESSED

1. PURPOSE: To update the National Credit Union Administration Rules and Regulations (July, 1980), in the following manner:

(a) Revision was made to Part 701, Organization and Operation of Federal Credit Unions by adding a new section 701.21-1A Interest Rates on Loans to Members;

(b) Revision was made to Part 701, Organization and Operation of Federal Credit Unions by amending section 701.21-3 Lines of Credit to Members;

(c) Revision was made to Part 701, Organization and Operation of Federal Credit Unions by amending section 701.21-6 Real Estate Lending;

(d) Revision was made to Part 701, Organization and Operation of Federal Credit Unions by deleting section 701.22 Selling Checks and Money Orders and section 701.23 Cashing Checks and Money Orders;

(e) Revision was made to Part 701, Organization and Operation of Federal Credit Unions by deleting section 701.34, Share Drafts;

(f) Revision was made to Part 701 Organization and Operation of Federal Credit Unions by amending section 701.35, Share, Share Draft and Share Certificate Accounts;

(g) Revision was made to Part 742 Liquidity Reserves by amending section 742.2, Definitions; and

(h) Revision was made by adding a new Part 761 Operational Procedures for Share Draft Programs; Federally Insured State Chartered Credit Unions.

2. BACKGROUND:

(a) Section 701.21-1A, Interest Rates on Loans to Members, was added which sets forth the conditions under which Federal credit unions may charge interest at rates up to the temporary ceiling authorized by the NCUA Board;

NCU 1.6:

(b) Section 700.1, Lines of Credit to Members, was amended by revising paragraph (a)(3) to refer to the ceiling on interest rates authorized by the NCUA Board;

(c) Section 701.21-6, Real Estate Lending was amended by revising paragraph (c)(4) to refer to the ceiling on interest rates authorized by the NCUA Board;

(d) Section 701.22 Selling Checks and Money Orders and section 701.23 Cashing Checks and Money Orders were deleted to deregulate credit union operations in these areas;

(e) Section 701.35, Share Drafts, was deleted because the requirements for operating share draft programs was transferred to Section 701.35 Share, Share Draft, and Share Certificate Accounts and Part 761, Operational Procedures for Share Draft Programs; Federally Insured State Chartered Credit Unions;

(f) Section 701.35 Share, Share Draft, and Share Certificate Accounts was revised to incorporate new regulations governing share draft accounts;

(g) Section 742.2, Definitions, was amended by adding a new paragraph (a)(7), which indicates that balances maintained pursuant to the reserve requirements of the Monetary Control Act of 1980 will be considered to be liquid assets for purposes of NCUA's liquidity reserve requirements; and

(h) Part 761 Operational Procedures For Share Draft Programs; Federally Insured State Chartered Credit Unions was added which sets forth procedures necessary for insured credit unions to implement and operate share draft programs.

3. GENERAL INSTRUCTIONS:

(a) Please update your copy of the publication as follows:

REMOVE PAGES	INSERT PAGES
701-7 through 701-16	701-7 through 701-16
701-25 through 701-34	701-25 through 701-33
742-1 through 742-2	742-1 through 742-2
-- --	761-1

4. EFFECTIVE DATE. The changes to sections 701.21-1A, 701.21-3(a)(3), and 701.21-6(c)(4) were effective December 3, 1980.

The changes to sections 701.22 and 701.23 were effective December 2, 1980.

The changes to sections 701.34 and 701.35, and to Part 761 were effective November 10, 1980, except that the changes to 701.35(1)(1)(iii), (viii), and (xi) will be effective March 1, 1981.

The change to section 742.2(a)(7) was effective November 3, 1980.

LAWRENCE CONNELL

R 86/980/ch.1

NATIONAL CREDIT UNION ADMINISTRATION

RULES AND REGULATIONS

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TRANSMITTAL SHEET **CHANGE 1**

NCUA 8006 (M3500)

NOV 2 1981

DATE: October 10,1980

U. S. GOVT. PUBS.
DEPOSITORY 376

TO: THE BOARD OF DIRECTORS OF THE FEDERAL CREDIT UNION OR THE FEDERALLY INSURED CREDIT UNION ADDRESSED

1. PURPOSE: To update the National Credit Union Administration Rules and Regulations (July, 1980), in the following manner:

(a) Revision was made to Part 700, Definitions, by amending section 700.1, Definitions;

(b) Revision was made to Part 701, Organization and Operation of Federal Credit Unions, by amending section 701.21-1, Lending policies: Loans and lines of credit to members;

(c) Revision was made to Part 701, Organization and Operation of Federal Credit Unions, by amending section 701.24, Refund of Interest;

(d) Revision was made to Part 701, Organization and Operation of Federal Credit Unions, by amending section 701.35 Share accounts and share certificate accounts;

(e) Revision was made to Part 725, Central Liquidity Facility, by amending section 725.5 Capital stock;

(f) Revision was made to Part 725, Central Liquidity Facility, by adding a new section 725.7 Special share accounts in federally chartered agent members; and

(g) Revision was made to Part 742, Liquidity Reserves by amending section 742.2, Definitions.

2. BACKGROUND:

(a) Section 700.1, Definitions, was amended by adding a new paragraph (16) under subsection (j), which excludes investments in shares of the NCUA Central Liquidity Facility from the definition of risk assets;

(b) Section 700.1, Definitions, was amended by adding a new subsection (l) which excludes from the definition of "gross income" dividends on shares of the NCUA Central Liquidity Facility, dividends on special share accounts in Agent members of the Facility, and interest earned by Agent members to the extent that interest is paid to the Facility by the Agent;

NCU 1.6:

(c) Section 701.21-1, Lending policies: Loans and lines of credit to members, was amended by revising subsection (d) to permit Federal credit unions to vary interest rates on loans according to categories established by the board of directors;

(d) Section 701.24, Refund of interest, was amended by conforming subsection (b) to the change made in Section 701.21-1(d);

(e) Section 701.35, Share accounts and share certificate accounts, was amended by inserting in paragraph (2) of subsection (e) a reference to 26 U.S.C. §72(m)(7), and by adding a new paragraph (6) to subsection (g) establishing a dividend ceiling for special share accounts in Agent members of the NCUA Central Liquidity Facility;

(f) Section 725.5, Capital stock, was amended by amending subsection (c) to permit stock subscriptions in the NCUA Central Liquidity Facility which are not paid-in to be held in liquid assets;

(g) Section 725.7, Special share accounts in federally chartered agent members was added to permit these Agent members of the NCUA Central Liquidity Facility to require their credit union members to maintain accounts to reimburse the Agent for its subscription to the stock of the Facility; and

(h) Section 742.2, Definitions, was amended by adding, in paragraph (5) of subsection (a), a reference to special share accounts of Agent members of the NCUA Central Liquidity Facility so that these accounts will be considered to be liquid assets.

3. GENERAL INSTRUCTIONS:

(a) Please update your copy of the publication as follows:

REMOVE PAGES	INSERT PAGES
700-1 through 700-2	700-1 through 700-2
701-7 through 701-8	701-7 through 701-8
701-9 through 701-10	701-9 through 701-10
701-29 through 701-30	701-29 through 701-30
725-3 through 725-4	725-3 through 725-4
742-1 through 742-2	742-1 through 742-2

4. EFFECTIVE DATE. The changes to sections 700.1, 701.35(g), 725.5, 725.7, and 742.2 were effective August 11, 1980.

The changes to section 701.21-1 and 701.24 were effective August 21, 1980.

The change to section 701.35(e) was effective July 15, 1980.

LAWRENCE CONNELL

NATIONAL CREDIT UNION ADMINISTRATION RULES AND REGULATIONS

JULY 1980

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

NCUA 8006

M3500

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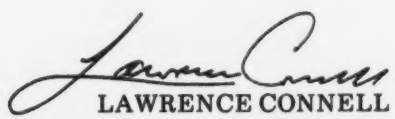
FOREWORD

This publication of NCUA Rules and Regulations dated July 1980 supersedes the March 1972 edition. We have included changes 1 through 44 to the March 1972 edition along with all other amendments to the rules and regulations as of July 1980.

For reasons of simplicity, congressional authority is not cited. Authority statements for the rules and regulations, however, are stated in chapter VII, Title 12 of the Code of Federal Regulations. Title 12 may be purchased as a single cloth-bound volume from the Superintendent od Documents, U.S. Government Printing Office, Washington, D.C. 20402

This manual of the rules and regulations for Federal Credit unions is being published so it may be kept in a standard three-ring binder. Future changes to this edition will be furnished as loose leaf pages to replace the original pages, and will be numbered beginning with Change 1.



LAWRENCE CONNELL
Chairman
National Credit Union Administration Board

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*THESE PARTS APPLY TO FEDERALLY INSURED STATE CHARTERED CREDIT UNIONS AS WELL AS FEDERAL CREDIT UNIONS.

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*THESE PARTS APPLY TO FEDERALLY INSURED STATE CHARTERED CREDIT UNIONS AS WELL AS FEDERAL CREDIT UNIONS.

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*THESE PARTS APPLY TO FEDERALLY INSURED STATE CHARTERED CREDIT UNIONS AS WELL AS FEDERAL CREDIT UNIONS.

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*THESE PARTS APPLY TO FEDERALLY INSURED STATE CHARTERED CREDIT UNIONS AS WELL AS FEDERAL CREDIT UNIONS.

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*THESE PARTS APPLY TO FEDERALLY INSURED STATE CHARTERED CREDIT UNIONS AS WELL AS FEDERAL CREDIT UNIONS.

Chapter VII—National Credit Union Administration

Part 700

Definitions

§700.1 Definitions.

As used in this chapter:

(a) "Act" means the Federal Credit Union Act (73 Stat. 628, 84 Stat. 944, 12 U.S.C. 1751-1795(ci)).

(b) "Administration" means the National Credit Union Administration.

(c) "Board" means the National Credit Union Administration Board.

(d) "Credit Union" means a credit union chartered under the Federal Credit Union Act or, as the context permits, under the laws of any State.

(e) "Regional Director" means the representative of the Administration in the designated geographical area in which the office of the Federal credit union is located.

(f) "Regional Office" means the office of the Administration located in the designated geographical area in which the office of the Federal credit union is located.

(g) "State" means a State of the United States, the District of Columbia, any of the several Territories and possessions of the United States and the Commonwealth of Puerto Rico.

(h) Pursuant to section 101(4) of the Federal Credit Union Act, the term "low income members" shall include (1) those members whose annual income falls at or below the lower level Standard of Living classification as established by the Bureau of Labor Statistics, U.S. Department of Labor, (2) those members who are residents of a public housing project who qualify for such residency because of low income, and (3) members who qualify as recipients in a community action program.

(i) As used in section 101(4) of the Federal Credit Union Act, the term "predominantly" is defined as a simple majority.

(j) For the purpose of establishing the reserves required by section 116 of the Federal Credit Union Act, all assets except the following shall be considered risk assets:

(1) Cash on hand.

(2) Deposits and/or shares in Federally or State issued banks, savings and loan associations, and credit unions.

(3) Assets which are insured by, fully guaranteed as to principal and interest by, or due from the U.S. Government, its agencies, the Federal National Mortgage Association, or the Government National Mortgage Association.

(4) Loans to other credit unions.

(5) Loans to students insured under the provisions of title IV, part B of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) or similar State insurance programs.

(6) Loans that are fully or partially insured or guaranteed by the Federal or a State government or any agency of either.

(7) Shares or deposits in central credit unions. A central credit union is defined as a credit union whose membership primarily consists of:

(i) Other credit unions organized under State or Federal law,

(ii) Officials, committee members, and employees of any credit union organized under State or Federal law, or

(iii) Any combination of the categories described in subdivisions (i) and (ii) of this subparagraph.

(8) Common trust investments which deal in investments authorized by the Federal Credit Union Act.

(9) Prepaid expenses.

(10) Accrued interest on nonrisk investments.

(11) Furniture and equipment.

(12) Land and buildings.

(13) Loans fully secured by a pledge of shares in the lending Federal credit union, equal to and maintained to at least the amount of the loan outstanding.

(14) Loans which are purchased from liquidating credit unions and guaranteed by the National Credit Union Administration.

(15) National Credit Union Share Insurance Fund Guaranty Accounts established with the authorization of the National Credit Union Administration under the authority of Section 208(a)(1) of the Federal Credit Union Act.

(16) Investments in shares of the National Credit Union Administration Central Liquidity Facility.

(k) (1) Insolvency. A credit union will be determined to be insolvent when the total amount of its shares exceeds the present cash value of its assets after providing for liabilities unless:

(i) It is determined by the Board that the facts that caused the deficient share-asset ratio no longer exist; and

(ii) The likelihood of further depreciation of the share-asset ratio is not probable; and

(iii) The return of the share-asset ratio to its normal limits within a reasonable time for the credit union concerned is probable; and

(iv) The probability of a further potential loss to the insurance fund is negligible.

(2) For purposes of this section, the following definitions are used:

(i) "Cash value of assets". Recorded value will be considered the cash value of any asset account providing accepted accounting principles and practices are followed and the provisions of law, regulation, and bylaws are met.

(ii) "Liabilities". Recorded liabilities which are due and payable, excluding shares of members and non-members, are considered liabilities.

(l) (1) For purposes of determining the amount required to be transferred to regular reserves under Sections 116 and 201(b)(6) of the Federal Credit Union Act, "gross income" means the total of the operating income accounts reduced by the following.

(1) Dividends received on shares in the National Credit Union Administration Central Liquidity Facility;

(2) Dividends received by credit unions on special share accounts held in Agent members of the Central Liquidity Facility authorized by § 725.7 of this Chapter; and

(3) Interest received by an Agent member of the Central Liquidity Facility to the extent of interest paid to the Facility by the Agent member. In the case of an Agent member of the Central Liquidity Facility that is a group of central credit unions—

(i) Interest received by the Agent group representative, as defined in § 725.1(b) of this chapter, to the extent of interest paid to the Facility by the Agent group representative; and

(ii) Interest received by each central credit union in the Agent group (other than the Agent group representative) to the extent of interest paid by each such central credit union to the Agent group representative on Agent group representative loans, as defined in § 725.1(b) of this Chapter. Non-operating gains and losses are not included in gross income.

Part 701

Organization and Operations of Federal Credit Unions

§701.1 Organizing a Federal Credit Union.

(a) Persons desiring to form a Federal credit union shall:

(1) Submit a charter application in accordance with the requirements of this regulation and guidelines contained in the *Chartering and Organizing Manual for Federal Credit Unions.*

The guidelines in the Manual are intended to be illustrative, and therefore, are not all inclusive.

(2) Select at least seven but not more than ten persons to be the subscribers. These subscribers must be from, and representative of, the group constituting the field of membership.

(b) The subscribers shall:

(1) Determine by meetings, personal contacts, or by survey:

(i) The number and general location of those people who intend to support the credit union by pledging a portion of their savings to be paid into the credit union within 30 days after the charter has been approved; and

(ii) The dollar volume of such pledges.

(2) Select at least five qualified persons who agree to serve on the board of directors, three qualified persons who agree to serve on the credit committee, and three qualified persons who agree to serve on the supervisory committee.

(c) A charter-organization meeting and the first meeting of officials shall be held in accordance with guidelines presented in the *Chartering and Organizing Manual for Federal Credit Unions.*

(d) The completed charter application—Investigation Report, Application and Agreement for Insurance of Accounts, Organization Certificate, Report of Official and Agreement to Serve (completed by each official), and Management Report for New Federal Credit Unions—shall be submitted to the appropriate Regional Office of the National Credit Union Administration.

(e) The investigation documentation for a charter application or charter amendment must establish that the following requirements have been met:

(1) That the proposed field of membership conforms to common bond principles:

(i) NCUA defines common bond as the sharing of some unifying factor or characteristic among persons that simultaneously links them together and distinguishes them from the general public. This unifying factor must be something more than an unfocused, generalized agreement on a given topic, or a common belief or philosophy on matters of general concern.

(ii) Occupational Federal credit unions may be chartered on the basis of a common bond of employment by the same employer, employment in certain related activities in the same general locality, or employment within a very limited specified area.

(iii) Associational Federal credit unions may be chartered on the basis of a common bond resulting from membership in an organization, participation in whose activities develops common loyalties, mutual benefits, and mutual interests.

(iv) Community Federal credit unions may be chartered on the basis of a common bond among persons who reside or work in a well-defined neighborhood, community, or rural district.

(2) That the economic advisability of establishing and insuring the proposed Federal credit union or amending the field of membership of an existing Federal credit union is supported in accordance with the requirements of this regulation and guidelines contained in the *Chartering and Organizing Manual for Federal Credit Unions.*

(3) That any overlap of credit union service is supported in accordance with the guidelines in the *Chartering and Organizing Manual for Federal Credit Unions.*

(4) That the general character and fitness of the subscribers is supported in accordance with the guidelines in the *Chartering and Organizing Manual for Federal Credit Unions.*

(5) For community charters, that the applicant has published a notice of intent to charter a community Federal credit union in one newspaper of general circulation for three successive days in the geographic area to be served by the credit union. The notice shall state that any comments are to be provided in writing to the appropriate Regional Office of the National Credit Union Administration within 30 days of the last date of the notice. The notice must be included with the applicant's other written documents and reports.

(f) Unless otherwise specified by the officials, standard "usual wording" is included in the field of membership. The following clauses are considered standard:

(1) "Spouses of persons who died while within the field of membership of this credit union";

(2) "Employees of this credit union";

(3) "Persons retired as pensioners or annuitants from the above employment";

(4) "Members of their immediate families"; and

(5) "Organizations of such persons."

(g) All new Federal credit union charters and all charter amendments shall be approved or disapproved in accordance with the requirements set forth in this regulation and the guidelines in the *Chartering and Organizing Manual for Federal Credit Unions*. If a charter application or charter amendment is disapproved, the officials will be advised in writing what:

(1) common bond requirement(s) were not met;

(2) economic factor(s) were not met;

(3) corrective measure(s) are necessary in order to meet requirements; and

(4) alternative(s) the group may wish to consider.

§701.2 Incorporation by reference.

(a) The publications used by Federal credit unions, which are identified and described in this chapter, are hereby incorporated by reference pursuant to 5 U.S.C. 552(a)(1) and the regulation issued thereunder.

(b) Copies of the publications prescribed in this chapter may be obtained on rquest addressed to National Credit Union Administration, Washington, DC 20456.

(c) Revisions or amendments of the publications may be issued from time to time by the National Credit Union Administration. An historic file or such amendments or revisions is maintained and made available for inspection at the National Credit Union Administration, Washington, DC 20456.

(d) The publications listed below, and more fully described in §§701.14 are hereby incorporated by reference:

(1) Accounting Manual for Federal Credit Unions,

(2) Federal Credit Union Bylaws,

(3) Data Processing Guidelines for Federal Credit Unions.

(e) Copies of these publications are on file with the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. The text of any changes in said publications will be filed with the Director, Office of the Federal Register, and a notice thereof will be periodically published in the FEDERAL REGISTER.

§701.3 Standard form of bylaws.

(a) Proposed bylaws, in form and content approved by the Board, shall be submitted by the incorporators to the Board for its approval at the time of submitting an organization certificate to the Regional Director.

(b) Copies of the bylaws and of the standard amendments thereto are made available upon request to the appropriate regional office.

§701.4 Amendment of bylaws and charters.

Amendments to the bylaws of a Federal credit union may be adopted and amendments to the charter requested as provided by the bylaws. No amendment of the bylaws or of the charter shall become effective, however, until approved in writing by the Board.

§701.5 Other applications.

(a) Except as otherwise provided by rule or regulation of the Administration all applications, requests, and submittals regarding Federal credit unions, for which no form of application has been prescribed by the Administration shall be in writing, signed by the applicant or his duly authorized agent, and shall contain a statement of the action requested, the reasons and facts relied upon as the basis for such requesting action, and the applicant's interest in the matter. The application, request, or submittal shall be addressed to the Regional Director or to the National Credit Union Administration in Washington, D.C. The applicant shall furnish such other pertinent information as may be required by the Board.

(b) Unless otherwise provided in these regulations, all applications regarding Federal credit union matters shall be investigated and reviewed by the Regional Director. The report and recommendations of the Regional Director as to the application shall be transmitted to the Administration in Washington, D.C. Notice of the action of the Board shall be promptly transmitted to the applicant together with a statement as to the basis for the action.

§701.6 Fees paid by Federal credit unions.

(a) *Basis for assessment.* Not later than January 31 of each calendar year, each Federal credit union shall pay to the Administration for the current calendar year an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of December 31 of the preceding year.

(b) *Coverage.* The operating fee shall be paid by each Federal credit union engaged in operations as of January 1 of each calendar year. Newly chartered Federal credit unions will not pay an operating fee until January 31 of the year following the first full calendar year after the date chartered. Federal credit unions merging with other Federal or state credit unions and Federal credit unions converting to state charter will not receive a refund of the operating fee paid to the Administration in the year in which the merger or conversion takes place. State chartered credit unions that convert to Federal charter will pay an operating fee on January 31 of the year following the conversion to a Federal charter. Federal credit unions in liquidation will not pay any operating fee after the date of liquidation.

(c) *Notification.* Each Federal credit union shall be notified at least 30 days in advance of the schedule of fees to be paid. A Federal credit union may submit written comments to the Board for consideration regarding the existing fee schedule. Any subsequent revision to the schedule shall be provided to each Federal credit union at least 15 days before payment is due.

(d) *Calendar Year 1979 Operating Fee.* For the calendar year 1979 the operating fees payable by each Federal credit union will be due 30 days after the effective date of this regulation. The basis for assessment and the coverage of the fees remain the same as stated in subsections (a) and (b) above.

§701.7 Deleted June 1979.

§701.8 Deleted June 1979.

§701.9 Deleted May 1977.

§701.10 Establishment of a cash fund.

The board of directors of a Federal credit union may authorize the establishment of or changes in a cash fund for making change, cashing checks, or other purposes. Before such authorization is given, the directors will consider whether a need for the fund exists and will insure that adequate safeguards and accountability will exist to protect the fund.

§701.11 Election report.

Each operating Federal credit union shall file annually with the Regional Director, within 10 days after the election or appointment of officials, a report setting forth the names and addresses of its officials. Copies of the standard form of report prescribed by the Administration (Form NCUA 4501) may be obtained from the Regional Director or from the Administration in Washington, D.C.

§701.12 Supervisory Committee Audits.

(a) The supervisory committee of each Federal credit union shall make or cause to be made an annual audit covering the period elapsed since the last annual audit. The annual audit shall be made in accordance with the requirements and standards set forth in the Supervisory Committee Manual for Federal Credit Unions (NCUA 8023). Upon completion, a report of the audit, which shall be on the form, or its equivalent, set forth in the aforementioned manual, shall be promptly made to the board of directors of the Federal credit union, and, upon request, to the Regional Director. A summary of the report shall be submitted to the members at the next annual meeting.

(b) The supervisory committee shall be responsible for the preparation and maintenance of work papers used to support each audit. As a minimum, each audit report shall be supported by work paper forms prescribed by the Supervisory Committee Manual for Federal Credit Unions, or their equivalent. Such work papers shall be available for review by any employee or employees of the National Credit Union Administration designated by the Board.

(c) The supervisory committee shall conduct supplementary audits upon request of the Board, and also may conduct additional audits on its own initiative.

§701.13 Financial and statistical and other reports.

(a) Each operating Federal credit union shall file with the National Credit Union Administration on or before January 31 of each year an annual Financial and Statistical report on Form NCUA 5300 as of the previous December 31. Form NCUA 5300 is furnished to all Federal credit unions by the Administration, and copies may be obtained from any Regional Office.

(b) When it is deemed necessary or desirable and upon written notice from the Board or Regional Director, Federal credit unions shall file, in accordance with instructions contained in such notice as to time and place, such financial or other reports as of such date or dates as shall be prescribed in such notice.

§701.14 Instructions for officials.

The National Credit Union Administration has published a number of manuals and booklets for use by officials of Federal credit unions in carrying out their duties. These publications, as listed and described below, are hereby incorporated by reference.

(a) *Accounting Manual for Federal Credit Unions.* This manual, designated NCUA 8022 contains information on standard accounting procedures, types of records, and standard accounting forms for Federal credit unions. Provision is made for the development of substitutes for any of the forms and for their use without advance approval by the Administration. The substitute forms, however, must meet criteria set forth in the manual. A copy of the manual is mailed to each Federal credit union at the time the approved organization certificate is delivered to the incorporators by the Administration. Additional copies are for sale by Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(b) *Federal Credit Union Bylaws.* This publication, designated NCUA 8001, contains the standard Federal credit union bylaws. A copy is mailed to each Federal credit union at the time the approved organization certificate is delivered to the incorporators by the Administration. Additional copies are for sale by Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(c) *Data Processing Guidelines for Federal Credit Unions.* This booklet, designated NCUA 8009, contains instructions for use by Federal credit unions utilizing data processing equipment. It is made available upon request from NCUA headquarters in Washington or from any Regional Office.

§701.15 Deleted June 1979.

§701.16 Statements of policy and interpretations.

In order to make available to the public any statement of policy and interpretations which do not appear in NCUA publications, and which may be relied on or cited as precedent, the Administration has established a file in each Regional Office and at its headquarters. This file, "Statements of Policy and Interpretations for the Public," is available for inspection and copying.

§701.17 List of Federal credit unions.

A master list of Federal credit unions, arranged by state, is maintained at NCUA headquarters and is available for inspection and copying. Each Regional Office maintains a similar list for the states for which it has responsibility. These lists are also available for inspection and copying. The Administration is not required to make available names and addresses of Federal credit unions arranged in any manner other than by state.

§701.18 Petitions.

Any interested person may petition the Board for the issuance, amendment, or repeal of any regulation by submitting such petition in writing together with a complete and concise statement of the petitioner's interest in the subject matter and the reasons why the petition should be granted. Such petition shall be submitted to the Administration in Washington, D.C.

§701.19 Retirement Benefits for Employees of Federal Credit Unions.

(a) A Federal credit union may make provision for reasonable retirement benefits for its employees and for officers who are compensated in conformance with the Act and the bylaws, either individually or collectively with other credit unions. In those cases where a Federal credit union is to be a plan trustee or custodian, the plan must be an individual retirement account maintained in accordance with the provisions of §721.4. Where the trustee or custodian is a party other than the Federal credit union, the employee benefit plan must be maintained in accordance with the applicable laws governing employee benefit plans and such rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other Federal or state authority exercising jurisdiction over such plans.

(b) No Federal credit union shall occupy the position of a fiduciary, as defined in the Employee Retirement Income Security Act of 1974 and rules and regulations promulgated thereunder by the Secretary of Labor, unless provision has been made for appropriate liability insurance as provided under section 410(b) of the Employee Retirement Income Security Act of 1974.

§701.20 Surety bond and insurance coverage for Federal credit unions.

(a) The board of directors of each Federal credit union shall, at least semi-annually, carefully review the bond and insurance coverage in force in order to ascertain its adequacy in relation to the exposure and to the minimum requirements fixed from time to time by the Board.

(b) All surety bonds must provide faithful performance-of-duty coverage for any officer or employee while performing any of the duties by the treasurer as prescribed in the Act, the Bylaws, or Rules and Regulations of the Administration.

(c) No form of surety bond shall be used except as is approved by the Board. Credit Union Blanket Bond, Standard Form No. 23 of the Surety Association of America (revised to May 1950), plus Faithful Performance Rider (for use with this form to broaden clause (a)) (revised to May 1950) shall be considered as the minimum coverage required and is hereby approved. Credit Union Blanket Bonds-NCUA Optional Forms 576, 577, 578, 579, 580, and 581 are also approved. No other bond form may be used unless specifically approved in writing by the Board. No form of surety bond is approved for use by a Federal credit union having its office outside of the continental United States unless by the terms of the bond or by an appropriate rider attached thereto the provisions of the bond are made applicable within the jurisdiction in which the office of such Federal credit union is located.

(d) All sureties writing Federal credit union bonds must hold a certificate of authority from the Secretary of the Treasury under the act of Congress approved July 30, 1947, (6 U.S.C. secs. 6-13), as an acceptable surety on Federal bonds in the state or jurisdiction concerned.

(e)(1) Where any of the following amounts exceed a Federal credit union's minimum limits as specified in paragraph (f) of this section, the minimum limits of that Federal credit union shall be increased to be equal to the greater of the following amounts:

(i) The aggregate amount of the daily cash fund (change fund plus maximum anticipated daily receipts) and food stamps (if any), on the Federal credit union's premises, or

(ii) The aggregate amount of the Federal credit union's money and food stamps (if any), placed in transit in any one individual shipment.

(2) Such increased limits must be obtained no more than 30 days after the discovery of the need for such increase.

(3) For the purposes of this section, the term "money" shall include currency, coin, banknotes, Federal Reserve notes, revenue stamps, and postage stamps.

(4) Subsection (1) notwithstanding, no increase in coverage shall be required where a Federal credit union temporarily increases its cash fund because of an extraordinary event which cannot reasonably be expected to recur. The Board shall determine whether this subsection applies to a given situation. A Federal credit union that wants to rely on this subsection must petition the Board, within 30 days of the discovery of facts that would otherwise require an increase in coverage, for a determination as to whether this subsection is applicable.

(f) The following schedule shall be deemed as the minimum requirements only:

Assets:	Minimum limit
$0 to $5,000	$1,000
$5,001 to $10,000	2,000
$10,001 to $20,000	4,000
$20,001 to $30,000	6,000
$30,001 to $40,000	8,000
$40,001 to $50,000	10,000
$50,001 to $75,000	15,000
$75,001 to $100,000	20,000
$100,001 to $150,000	30,000
$150,001 to $200,000	40,000
$200,001 to $300,000	50,000
$300,001 to $400,000	60,000
$400,001 to $500,000	70,000
$500,001 to $750,000	85,000
$750,001 to $1,000,000	100,000
$1,000,001 to $50,000,000	[1] 100,000
$50,000,001 to $150,000,000	[2] 2,500,000
Over $150,000,000	5,000,000

[1] Plus $50,000 for each million or fraction thereof of assets over $1,000,000.
[2] Plus $25,000 for each million or fraction thereof of assets over $50,000,000.

It shall be the duty of the board of directors of each Federal credit union to provide proper protection to meet any circumstances by obtaining adequate bond and insurance coverage in excess of the above minimum schedule.

(g) The minimum limits specified in paragraph (f) of this section shall be deemed to apply to those surety and insuring clauses contained in Credit Union Blanket Bond, Standard Form No. 23 of the Surety Association of America (revised to May 1950), plus Faithful Performance Rider (revised to May 1950), such coverage being the minimum coverage required by paragraph (c) of this section. Coverage equivalent to the above standard form and rider provided in Credit Union Blanket Bonds-NCUA Optional Forms 576, 577, 578, 579, 580, and 581, or any other optional form approved in accordance with paragraph (c) of this section, must also conform with the minimum limits set forth in paragraph (f) of this section. Any additional coverage contained in an approved optional form is not subject to paragraph (f) of this section. Any proposal for reduced coverage on any of the above surety or insuring clauses must be approved by the Board at least 20 days in advance of the proposed effective date.

(h) Maximum deductible limits may be applied to the minimum required coverage contained in Standard Form No. 23 of the Surety Association of America (revised to May 1950) and equivalent coverage contained in NCUA

Optional Forms 576, 577, 578, 579, 580, and 581, or any other optional form approved in accordance with paragraph (c) of this section, as specified in the table below. Any additional coverage contained in an approved optional form is not subject to this paragraph. Deductibles in excess of those shown in the table must be approved by the Board in writing at least 20 days prior to the effective date of such deductibles. In no event shall any deductible be applied to those provisions of the bond which protect the credit union against loss due to dishonesty or lack of faithful performance of an employee.

Assets:	Maximum deductible
0 to $100,000	(1)
$100,001 to $250,000	$500
$250,001 to $500,000	750
$500,001 to $750,000	1,000
$750,001 to $1,000,000	1,500
$1,000,001 to $2,000,000	2,000
$2,000,001 to $3,000,000	3,000
$3,000,001 to $5,000,000	4,000
Over $5,000,000	5,000

(1) No deductible.

(i) The Board may require additional coverage for any Federal credit union when, in its opinion, the surety bonds in force are insufficient to provide adequate coverage and it shall be the duty of the board of directors of the Federal credit union to obtain such additional coverage within 30 days after the date of written notice.

§701.21-1 Lending policies: Loans and lines of credit to members.

(a) For the purposes of §701.21:

(1) "Security" means an interest in property which has tangible value or any endorsement of a person which will wholly or partially secure a loan obligation. Security includes any contractually created interest in a member's share account, but not that interest created by Section 107(11) of the Federal Credit Union Act (12 U.S.C.A. 1757(11)).

(2) "Unsecured loan limit" means the maximum amount of funds which may be loaned to any member, without security, including any unsecured advances under a line of credit and the unsecured portion of any partially secured loan.

(3) "Secured loan limit" means the maximum amount of funds which may be loaned to any member, including advances under a line of credit, with security.

(4) "Loan file" means a file maintained by a Federal credit union which includes applications for loans and lines of credit for a specific borrower and other related information concerning the borrower's creditworthiness.

(b) Within the limits of the Act and this Part, the board of directors of a Federal credit union shall establish specific written policies, which shall include at least (1) the secured loan limit and unsecured loan limit, and (2) the classifications established under paragraph (d) of this section, and the rate of interest applying to each classification.

(c) On the first occasion on which the board of directors of a Federal credit union determines to charge a loan interest rate in excess of 12% per year on the unpaid balance inclusive of all finance charges, the Federal credit union shall provide notification to its members which shall:

(1) state the reasons for and the effective date of the increase;

(2) adequately inform the members of the credit union of the maximum loan interest rate authorized by law. The notification may state, "Your credit union is authorized by law to charge a maximum loan interest rate of 15% per year on the unpaid balance inclusive of all finance charges, or such amount in excess of 15% as may be authorized by the National Credit Union Administration Board"; and

(3) be effected by:

(a) immediately posting a conspicuous written notice in the main office and all branch offices of the Federal credit union; and

(b) providing actual notice by mail or otherwise, at the earliest opportunity, to all members receiving the credit union's most recent statement of account, if the board of directors determines that the posting of the notification is not sufficient to provide actual notice to a majority of the Federal credit union's members.

(d) Interest rates charged on loans (including line of credit balances) may vary according to written classifications established by the board of directors consistent with cooperative principles and existing laws and regulations.

(e) Subject to limitations established by the board of directors, the credit committee or loan officer shall consider the following factors in ruling on applications for loans or loan accounts (including lines of credit):

(1) The amount and regularity of receipt of funds which the borrower intends to rely upon for repayment.

(2) The borrower's other commitments and anticipated financial needs over the term of his obligation to the credit union.

(3) Other valid factors of creditworthiness as determined by the credit committee or loan officer.

(4) The best interests of the member and credit union.

(f) The loan files of a Federal credit union shall contain:

(1) a loan or line of credit application which documents that the credit committee or loan officer has considered for each borrower the factors specified in paragraph (e) of this section;

(2) evidence of the financial rsponsibility of any endorser;

(3) the value of any security provided by a borrower; and,

(4) the interval at which the borrower receives funds which are intended to be relied upon for repayment of a line of credit, if apyments for such line of credit will be made at intervals greater than one month.

§701.21-1A Interest Rates on Loans to Members

(a) General. Except as otherwise authorized by the NCUA Board, a Federal credit union may make loans to its members at rates not to exceed 15 percent per year on the unpaid balance inclusive of all finance charges.

(b) Temporary Rates.

(1) Authorization. Effective December 3, 1980, a Federal credit union may make loans to its members (including advances under a line of credit or other credit plan) at rates not to exceed 21 percent per year on the unpaid balance inclusive of all finance charges.

(2) Existing Accounts. The interest rate on a closed end loan in existence as of December 3, 1980, may not be increased pursuant to this authority (unless the loan is refinanced). The interest rate on an open end credit balance in existence as of December 3, 1980, may be increased pursuant to this authority only if authorized by the credit agreement and only in accordance with the notice requirements of the Truth in Lending Act and Regulation Z. (This section is being promulgated pursuant to the plenary and exclusive authority of the NCUA Board as set forth in Sections 107(5)(A)(vi) and 107(5)(A)(ix) of the Federal Credit Union Act, to regulate the interest rates on, and the amortization of, loans made by Federal credit unions to members. This exercise of the Board's authority preempts state laws purporting to address a Federal credit union's ability to raise interest rates on loans, except for those cases where state law applies because the state has been granted an exemption from the Truth in Lending Act and Regulation Z.)

(c) Expiration. After September 2, 1981, or as otherwise ordered by the NCUA Board, the maximum rate on Federal credit union loans to members shall revert to 15 percent per year. Rates in excess of 15 percent per year (in the discretion of the Federal credit union and as provided in the credit agreement) may be charged on closed end loans and on open end credit balances existing before September 3, 1981. Rates in excess of 15 percent per year cannot be charged on advances of open end credit made after September 2, 1981. If higher rates are charged on balances existing before September 3, 1981, then payments made after September 2, 1981, shall, after assessment of interest and other charges, be used first to retire advances made on or after December 3, 1980, and before September 3, 1981, and then to retire advances made after September 2, 1981.

§701.21-2 Amortization and payment of loans to members.

(a) A loan to a member shall be paid by substantially equal payments at intervals of not greater than 12 months. An approved line of credit to a member shall provide for payments at intervals of not greater than 1 month.

(b) The board of directors may, by resolution:

(1) Require that any loan agreement provide for periodic substantially equal payments at intervals shorter than 12 months.

(2) Authorize the following exceptions to the requirements of paragraph (a):

(i) A loan for the purpose of vocational or higher education of the member/borrower may be made with a maturity of not greater than 12 years and on such terms of payment as the credit committee or loan officer find to be consistent with the needs of the member/borrower and the best interest of the credit union.

(ii) A loan with a maturity of less than 30 months may be repaid by a single payment of principal if the credit committee or loan officer find that such terms are justified by the needs and condition of the borrower.

(iii) A line of credit may provide for required payments at intervals of greater than 1 month, but not greater than 12 months, where appropriate to coincide with the member/borrower's receipt of income.

(iv) A line of credit extended by a Federal credit union to its member credit union may provide for required payments at intervals of not greater than 12 months.

(c) Each loan shall provide for:

(1) Payment of interest with each payment of principal;

(2) Payment of interest not less frequently than annually; and

(3) Sufficient payments to pay the loan in full at maturity.

§701.21-3 Lines of credit to members.

(a) For the purposes of this section:

(1) "Line of credit" means a fixed amount which may be drawn upon by a member from time to time and which may be replenished by payment on amounts previously drawn.

(2) "Agreement" means the written document signed by the borrower to establish the terms and conditions of a line of credit.

(b) Each line of credit shall be evidenced by an agreement which shall contain, incorporate by reference, or provide for at least the following:

(1) The credit limit, or maximum amount of principal available under the agreement which may be drawn upon by a member at any time.

(2) A schedule of required payments sufficient in amount to retire the unpaid principal balance within the maturity limits of the Act.

(3) Interest at a specified rate or rates that do not exceed the maximum rate authorized by the National Credit Union Administration Board.

(4) The borrower's promise to pay.

(5) Repayment of any amounts outstanding prior to maturity in whole or in part on any business day without penalty.

(6) Other conditions established by the board of directors necessary to protect the best interests of the credit union and to comply with applicable Federal and State laws and regulations.

(7) That the credit committee may terminate the agreement under the following conditions:

(i) Upon adverse reevaluation of the borrower's creditworthiness.

(ii) Upon failure of the borrower to satisfy the terms of the agreement.

(iii) At the option of the borrower or of the credit union with good cause.

(c) Termination of a line of credit agreement by the credit union shall be given by written notice and shall not affect the borrower's obligation to pay the balance outstanding incurred prior to the notice.

(d) The board of directors shall require a review, at least once every 36 months, of the loan file of each member who has a line of credit. To the extent governed by sound lending principles, the review shall be completed by obtaining current information to reassess the member's creditworthiness. The date of this review shall be documented in the member's loan file.

(e) A reapplication by the member and approval by the credit committee or loan officer shall be required, if:

(1) The credit limit is increased, or

(2) The terms of payment are extended beyond the terms of the original agreement.

(f) The board of directors shall establish policy for control of advances disbursed under the line of credit agreement which exceed the borrower's credit limit.

(g) Each month the board of directors shall review the credit union's liquidity status in relation to extending loans approved under line of credit agreements and shall document at least the following information as of the previous month end in the board of directors' minutes:

(1) The number and amount of outstanding balances under all line of credit agreements.

(2) The aggregate amount of credit approved under line of credit agreements.

(3) The total amount of loans advanced and the total amount of loans repaid under line of credit agreements for the previous month.

§701.21-4 Loans to officials.

(a) For purposes of this section:

(1) "Official" includes a member of the board of directors, credit committee, or supervisory committee.

(2) "Application" shall include all applications by officials for loans and lines of credit and all applications by members for loans and lines of credit for which officials intend to act as endorsers or guarantors.

(b) The credit committee or loan officer shall act upon all applications.

(c) The following computation shall be used to determine which applications must be considered by the board of directors or executive committee.

(1) Add:

(i) The amount of the current application.

(ii) The outstanding balances of loans, including the used portion of an approved line of credit, extended to or endorsed or guaranteed by the official.

(iii) The total unused portion of approved lines of credit extended to or endorsed or guaranteed by the official.

(2) From the above total subtract:

(i) The amount of shares pledged by the official on loans or lines of credit extended to or endorsed or guaranteed by the official.

(ii) The amount of shares to be pledged by the official on the loan or line of credit applied for.

(3) The board of directors shall consider an application if the computation produces a total in excess of $5,000.

(d) The board of directors shall establish a procedure for processing all applications involving officials. This procedure shall include the appointment of an individual(s) responsible for:

(1) Assuring that the application is completed as to income and debt obligations.

(2) Documenting, on the application, the computation explained in paragraph (c).

(e) Prior to disbursing a loan or granting a line of credit, in addition to compliance with the provisions set forth in sections 701.21-1, 701.21-2, and 701.21-3, the following requirements must be met:

(1) The application shall indicate the credit committee's or loan officer's approval and the board of director's or executive committee's approval if required by subsection (c) of this section.

(2) The rate, terms and conditions of the approved loan or line of credit shall not be more favorable than the rate, terms and conditions for comparable loans or lines of credit to other credit union members.

(3) The approved loan or line of credit must comply with the requirements of the Act.

(4) An official shall not consider his/her application or one for which he/she is acting as an endorser or guarantor. Also, an official shall not be present at a meeting while his/her application or one for which he/she is acting as an endorser or guarantor is being considered.

(5) The application may be approved only if a quorum of the board is present and all present agree to approve the application.

(6) As a minimum, the following information shall be recorded in the board's minutes:

(i) Board's decision on an application.

(ii) Name of applicant.

(iii) Names of board members present at the meeting.

(iv) Name of endorsing or guaranteeing official (if applicable).

§701.21-5 Insured and guaranteed loans.

(a) A Federal credit union which has been qualified as a lender under a Federal or State insured or guaranteed loan program may make loans to members under the terms and conditions and within the maturities specified by the laws and regulations governing the program.

(b) Loans or lines of credit approved under the provisions referenced in paragraph (a) of this section shall be in full compliance with all applicable provisions of such laws and regulations including any requirements to record liens or related collateral. Where a Federal or State insurance or guarantee is accepted as security for a loan or line of credit, the credit committee shall determine that the interest of the credit union is adequately protected and that the borrower's application reflects his/her creditworthiness.

§701.21-6 Real estate lending.

(a) For purposes of this section:

(1) "One-to-four family dwelling" means a structure designed for residential use by not more than four families. The term also includes a one-to-four family unit in a planned unit development or condominium project where certain portions of the security property are owned in common with others. The term does not include a unit in a cooperative project.

(2) "Principal residence" means a structure where the member will be domiciled or will reside permanently within 6 months after initial disbursement of the loan, or within 18 months provided the structure is being newly constructed or extensively rehabilitated.

(3) "Median sales price" means that price level at which half of the residential real property in a geographical area have sold below and half have sold above within a period not exceeding 12 months prior to the disbursement of the loan. Sampling techniques may be utilized to determine "Median sales price."

(4) "Geographical area" means a definable market area. If such an area cannot be defined, regional areas such as city, county, census tract, or standard metropolitan statistical area will be used. In defining and selecting geographical areas the board will consider the availability of funds to persons of greater need and more moderate means; it shall not seek out high priced areas as the basis for determining the median sales price.

(5) "Value" means the lower of the appraised market value or the purchase price. In the case of residential real property being rehabilitated, "Value" shall also include the cost of rehabilitation. The cost of rehabilitation shall be supported by a good faith estimate.

(6) "Appraisal" means an objective estimate of value based upon a physical examination and evaluation which shall disclose the market value of the security offered by use of the market sales approach which shall be supported by an analysis of comparable properties in the immediate area. The market value shuld also be supported by use of the cost and income appraisal methods if conditions warrant.

(7) "Appraiser" means a person who is experienced in the appraisal of one-to-four family dwellings and is actively engaged in such appraisal work and whose qualifications are demonstrated by membership in a national professional appraisal organization, or who is licensed to appraise in the state in which the real estate is located or who is acceptable as an appraiser by an insuring or guaranteeing agency of the Federal or State government.

(8) "Market value" means the highest price which real property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus.

(9) "Security instrument" means either a Deed of Trust, Mortgage or Leasehold Mortgage which constitutes a first lien. Only in those areas of the United States of America, its territories and possessions, or the Commonwealth of Puerto Rico where an interest in real estate is customarily evidenced by leasehold or ground estates will the term "Leasehold Mortgage" be included in this definition.

(10) "Insured or Guaranteed Loan" means any loan that is fully or partially insured or guaranteed by the Federal Government, State government, or any agency of either.

(11) "Escrow account" means either a special limited withdrawal share account or accounts payable account for the accumulation of funds to pay for not more than one year's taxes, assessments, insurance premiums, construction proceeds, or other charges that could affect the credit union's first lien position.

(12) "Title insurance" means insurance protecting the credit union against loss due to clouds or defects in title to real property equaling the current principal balance of the mortgage loan also protecting and benefiting subsequent purchasers of the mortgage.

(13) "Hazard insurance" means property insurance affording protection against loss or damage from fire and other hazards covered by the industry's standard extended coverage endorsement which provides for payment of an amount sufficient to pay the mortgage balance in the event of a covered loss, with a standard mortgagee clause in favor of the credit union and subsequent purchasers of the mortgage.

(14) Federal credit unions with assets of $2,000,000 or more, or any other Federal credit union with prior written consent of the Administration, may originate loans secured by first liens on residential real property, with maturities in excess of 12 years and not exceeding 30 years within the limitations of written policies adopted by the board of directors provided:

(1) Loans shall be made to finance or refinance a one-to-four family dwelling which will be used for the principal residence of the Federal credit union member.

(2) Loans shall be amortized by substantially equal monthly installments sufficient to retire the loan at maturity. Each monthly installment shall be applied first to taxes and insurance due and payable (when an escrow account is established), then to interest currently due and payable, with the remainder to principal. Amortization shall commence no later than 61 days after disbursement of proceeds and shall not exceed 30 years from date of disbursement. An Insured or Guaranteed Loan shall be amortized as permitted by the insuring or guaranteeing agency. With prior written consent of the Administration, loans may be amortized by other than substantially equal monthly installments.

(3) The sales price of the real estate and improvements thereon shall not exceed 150 per centum of the median sales price of residential real property in the geographical area in which the property is located.

(4) The aggregate dollar amount of real estate loans outstanding may not exceed 25 per centum of the Federal credit union's assets without prior written consent of the Administration. This limitation does not include real estate loans with maturities not exceeding 12 years.

(5) The loan shall not exceed 90 per centum of value at the time of disbursement except that:

(i) An Insured or Guaranteed Loan may equal the maximum amount acceptable to the insuring or guaranteeing agency.

(ii) The loan amount may equal up to 95 per centum of value provided that private mortgage insurance is obtained for the amount of the loan in excess of 90 per centum of value.

(6) The loan application shall be the current revision of FHLMC Form 65/FNMA Form 1003 or its equivalent. In the case of an Insured or Guaranteed Loan the loan application shall be acceptable to the insuring or guaranteeing agency.

(7) The security instruments and notes shall be executed on the current revision of the FNMA/FHLMC Uniform Instruments for the jurisdiction in which the property is located. No prepayment penalty shall be allowed. In the case of an Insured or Guaranteed Loan these instruments shall be acceptable to the insuring or guaranteeing agency.

(8) The loan shall be secured by a perfected first lien on real property in favor of the credit union supported by a properly executed and recorded security instrument. No loan shall be secured by real property located outside the United States of America, its territories and possessions, or the Commonwealth of Puerto Rico.

(9) Where an interest in real estate is customarily evidenced by leasehold or ground rent estates, real estate loans shall comply with the preceding provisions of this section in addition to the procedures customarily followed to perfect an interest in a leasehold or ground rent estate. In the case of an Insured or Guaranteed Loan the leasehold or conveyance reserving ground rents shall comply with the requirements of the insuring or guaranteeing agency.

(10) A Federal credit union may require the member/borrower to maintain an escrow share account. If a member's loan is assumed by a non-member, any required escrow account shall be maintained as an interest bearing account payable. The rate of interest paid on such accounts shall be equal to the dividend rate paid on regular share accounts.

(11) Each mortgage loan file shall contain the following:

(i) A loan application supported by an executed sales contract and any modifications bearing the signature of the applicant(s) and a statement of the median sales price for the geographical area.

(ii) A written appraisal on the current revision of FHLMC Form 70/FNMA Form 1004; FHLMC 465; FNMA Form 1004-A or their equivalent, prepared and signed prior to approval of the loan application by an appraiser who shall provide a certification on the current revision of FHLMC Form 439 or its equivalent. In the case of an Insured or Guaranteed Loan, the apraisal form shall comply with the requirements of the insuring or guaranteeing agency.

(iii) When applicable, a private mortgage insurance certificate or documentation of Insured or Guaranteed Loans.

(iv) A complete settlement statement (Form HUD-1) detailing all charges and fees and distribution of the loan proceeds.

(v) An opinion of title signed by an attorney licensed to practice in the jurisdiction in which the property is located or a title insurance

policy affirming the quality and the position of the first lien.

(vi) A current hazard insurance policy.

(vii) A flood insurance policy, if required.

(viii) A properly executed note and security instrument and a document indicating the date and place(s) of recording of such instruments.

(c) The following restrictions shall be applicable to all loans made under this section:

(1) A Federal credit union shall not grant any loan on the prior condition, agreement, or understanding that the borrower contract with any specific person or organization for the following:

(i) Insurance services (as an agent, broker, or underwriter) except insurance or a guarantee provided by a government agency;

(ii) Building materials or construction services;

(iii) Legal services rendered to the borrower; and

(iv) Services of a real estate agent or broker.

(2) Notwithstanding the preceding paragraph, a Federal credit union may refuse to grant any loan if it believes, on reasonable grounds, that the insurance services provided by the person or organization selected by the borrower will afford insufficient protection to the credit union.

(3) A Federal credit union shall not make any mortgage loan if, either directly or indirectly, any commission, fee or other compensation is to be paid to, or received by, any of its officials or employees in connection with the procuring or insuring of the loan.

(4) Early repayment of a loan involving points or finance charges shall require recomputation. A refund, or an adjustment of the final payment, must be made to ensure that the true rate of interest has not exceeded the maximum rate authorized by the National Credit Union Administration Board at the time the loan was granted. This requirement also applies to loans the credit union has sold in whole or in part. But this requirement does not apply to government insured or guaranteed loans.

(5) A Federal credit unin shall not charge a loan origination fee in excess of one-half of 1 percent of the loan amount except that the loan origination fee charged on an insured or guaranteed loan may equal up to 1 percent of the loan amount if authorized pursuant to law or regulation of the insuring or guaranteeing agency.

§701.21-7 Loan Participation.

(a) For the purpose of this section:

(1) "Participation loan" means a loan, other than a line of credit loan, made in participation with one or more eligible organizations, where the written commitment to participate in the loan precedes final disbursement.

(2) "Eligible organizations" means a credit union, credit union organization, or financial organization.

(3) "Credit union" means any Federal or state chartered credit union.

(4) 'Credit union organization" means any organization as determined by the Board, established primarily to serve the daily operational needs of its member credit unions. The term does not include trade associations, membership organizations principally composed of credit unions, or corporations or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions.

(5) "Financial organization" means any federally chartered or federally insured financial institution, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.

(6) "Originating lender" means the participant with which the member contracts.

(7) "Participation account" means a special payable account established for the accumulation of loan payments awaiting distribution to participants.

(b) Subject to the provisions of this section any Federal credit union may participate in making loans with eligible organizations within the limitations of the board of directors written participation loan policies, PROVIDED:

(1) no Federal credit union shall obtain an interest in a participation loan if the sum of that interest and any (other) indebtedness owing to the Federal credit union by the borrower exceeds 10 per centum of the Federal credit union's unimpaired capital and surplus;

(2) prior to final disbursement, a written participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors or the investment committee and retained in the Federal credit union's office. At a minimum, the agreement shall include provisions which:

(i) identify the participation loan or loans;

(ii) provide for the collection, processing, and/or remittance of payments of principal and interest, late charges, service charges, escrow accounts (if required), and participation accounts;

(iii) disclose the responsibilities of each participant in the event the loan becomes subject to collection, loss, or foreclosure;

(iv) provide that in the event of a loss each participant shall share in the loss equal to its interest in the participation loan;

(v) provide for the distribution of payments of principal to each participant proportionate to its interest in the participation loan;

(vi) provide for loan status reports to each participant; and

(vii) state the terms and conditions under which the agreement may be terminated or modified.

(3) A participation loan shall not be subject to recourse or contain repurchase provisions. However, the following are permitted:

(i) an agreement which requires the originating lender to repurchase a participating interest because of any breach of warranty or misrepresentation;

(ii) an agreement which allows the originating lender to repurchase at its discretion; and

(iii) an agreement which allows the originating lender to substitute for the loan another participation loan.

(4) A Federal credit union's acquired interest and its retained interest in participation real estate loans with maturities in excess of 12 years shall be included in the aggregate dollar amount of real estate loans allowed under Part 701.21-6(b)(4) of this Chapter.

(5) A Federal credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

(c) An originating lender which is a Federal credit union shall:

(1) originate loans only to its members;

(2) retain an interest of at least 10 per centum of the face amount of each loan;

(3) retain the original or copies of the loan documents; and

(4) obtain approval of the loan from the credit committee or loan officer.

(d) A participant Federal credit union that is not an originating lender shall:

(1) participate only in loans it is empowered to grant;

(2) partricipate in participation loans only if made to its own members or members of another participating credit union;

(3) retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and

(4) obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.

§701.21-8 Purchase, Sale, and Pledge of Eligible Obligations.

(a) For purposes of this section:

(1) "Eligible obligation" means a loan or group of loans, other than a line of credit loan, except, however, the term shall include a line of credit loan of a liquidating credit union.

(2) "Student loan" means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the Federal Government, of a State government, or any agency of either.

(3) "Real estate loan" means a loan granted to finance the acquisition of a one-to-four-family dwelling for the principal residence of the borrower, the sales price of which is not more than 150 percent of the median sales price of residential real property situated in the geographical area in which the property is located, and which is secured by a first lien upon such dwelling.

(4) "Obligation account" means a special payable account established for the accumulation of payments on a loan awaiting distribution to the purchaser of an eligible obligation.

(b) Purchase.

(1) A Federal credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

(i) Eligible obligations of its members, from any source, if either (A) they are loans it is empowered to grant or (B) they are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant;

(ii) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;

(iii) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and

(iv) Real estate loans, from any source, if the purchaser is granting real estate loans pursuant to section 701.21-6 on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledeged on the secondary mortgage market. The dollar amount of loans purchased in accordance with this subsection shall be included in the aggregate dollar amount of real estate loans allowed under section 701.21-6(b)(4).

(2) A Federal credit union may make purchases in accordance with subsection (b), provided:

(i) The board of directors or investment committee approves the purchase; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office.

(3) The agreement to purchase a partial interest in eligible obligations shall, at a minimum:

(i) Identify the eligible obligations covered by the agreement;

(ii) Provide for the collection, processing and/or remittance of payments of principal and interest, late charges, service charges, escrow accounts (if required), and obligation accounts;

(iii) Disclose the responsibilities of each party in the event an eligible obligation becomes subject to collection, loss or foreclosure;

(iv) Provide that in the event of loss each owner shall share in the loss in proportion to its interest in the eligible obligations;

(v) Provide for the distribution of payments of principal to each owner proportionate to its interest in the eligible obligation;

(vi) Provide for loan status reports; and

(vii) State the terms and conditions under which the agreement may be terminated or modified.

(4) The aggregate of the unpaid balances of eligible obligations purchased under subsection (b) shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. Student loans purchased in accordance with subsection (b)(1)(iii) and real estate loans purchased in accordance with subsection (b)(1)(iv) shall not be included in considering this 5 percent limitation.

(c) Sale.

(1) A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with subsection (b)(1)(ii), student loans purchased in accordance with subsection (b)(1)(iii), and real estate loans purchased in accordance with subsection (b)(1)(iv), within the limitations of the board of directors' written sale policies, provided:

(i) The board of directors or investment committee approves the sale; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(2) An agreement to sell a partial interest in eligible obligations shall at a minimum comply with the requirements set forth in subsection (b)(3).

(3) A sale of an eligible obligation shall not be subject to recourse or repurchase provisions. However, the following are permitted:

(i) An agreement which requires the seller to repurchase the eligible obligation because of any breach of warranty or misrepresentation;

(ii) An agreement which allows the seller to repurchase at its discretion; and

(iii) An agreement which allows substitution of one loan for another loan.

(d) Pledge.

(1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with subsection (b)(1)(ii), student loans purchased in accordance with subsection (b)(1)(iii), and real estate loans purchased in accordance with subsection (b)(1)(iv), within the limitations of the board of directors' written pledge policies, provided:

(i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit u nion that pledges the eligible obligations.

(2) The pledge agreement shall, at a minimum:

(i) Identify the eligible obligations covered by the agreement;

(ii) disclose the responsibilities of each party in the event an eligible obligation becomes subject to collection, loss or foreclosure;

(iii) Set forth the terms and conditions regarding substitution; and

(iv) Set forth the terms and conditions under which the agreement may be modified or terminated.

(e) Servicing.

A Federal credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

(f) 10 Percent Limitation.

The total indebtedness owing to any Federal credit union by any person, inclusive of retained and reacquired interests, shall not exceed 10 percent of its unimpaired capital and surplus.

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§701.22 Deleted December 1980.

§701.23 Deleted December 1980.

§701.24 Refund of interest.

(a) The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period.

(b) The amount of interest refund to each member shall be determined as a percentage of the interest paid by the member. Such percentage may vary according to classifications of loans established pursuant to 12 CFR 701.21-1(d).

(c) Based upon a determination that such loans have not made a significant contribution to the earnings that make the refund possible, the board of directors may exclude from an interest refund (i) any classification of loans determined in accordance with paragraph (b) of this section, and (ii) all loans delinquent at least two months, or all loans delinquent for such greater period as is determined by the board.

(d) The board of directors minutes shall document the reasons for any decision to vary interest refund rates or exclude certain loans from a refund.

(e) The board of directors may authorize an interest refund for a dividend period only during such time as it may declare a dividend. However, if in a given calendar year a credit union has dividend periods more frequent than annual and an interest refund was not authorized for one or more dividend periods, the board, during the time permitted for the declaration of the current dividend, may authorize an interest refund for the current dividend period and for any one or more of the omitted dividend periods.

(f) The board of directors shall not authorize an interest refund for any dividend period unless dividends have been declared and paid on share accounts.

(g) An interest refund shall be recorded on the books of the credit union as a reduction of interest income.

§701.25 Deleted August 1977.

§701.26 Credit union service center.

(a) For the purposes of this section.

(1) "Service Center" means a credit union service center which provides services to include, but not necessarily limited to, physical facilities, centralized management, and accounting services.

(2) "Accounting Service" means the maintenance of bookkeeping, accounting, or other records related to the purposes and functions of a credit union by manual, mechanical or electronic methods, and the furnishing of reports and information derived from such records.

(3) "Individual Identity" means that the identity of each participating Federal credit union is easily distinguishable from other credit unions and organizations participating in the service center activities.

(4) "Centralized management" means the single authority responsible for supervising, controlling and directing the day-to-day operations of the service center.

(b)(1) One or more Federal credit unions may contract with a vendor other than a Federal credit union to provide a credit union service center. The contract shall be in writing, shall have the approval of the Board, and shall expressly provide for:

(i) Segregating the credit union's assets and records;

(ii) Maintaining the credit union's individual identity;

(iii) Establishing minimum security devices and procedures in accordance with Part 748 (12 CFR 748);

(iv) Complying with the mandatory requirements with regard to the advertisement of insured status in accordance with Part 740 (12 CFR 740);

(v) Describing the services to be provided by the vendor and establishing the costs of these services subject to periodic review and negotiation;

(vi) Complying with the provisions of section 701.14 of this Part concerning all services performed;

(vii) Immediate availability and possession of the Federal credit union's books and records for examination by the Administration and audit by the supervisory committee;

(viii) Establishing centralized management in consonance with the board of directors

of each credit union directing and controlling the affairs of the credit union;

(ix) Notifying the credit union's surety company and obtaining written assurance from surety that coverage extends to the service center and its employees;

(x) Appointing the service center and its employees as agents of the credit union for purposes of transacting contracted services; and

(xi) Terminating, assigning, and mediating the contract.

(2) The files of the Federal credit union shall contain specific information concerning the procedures to be used by the vendor in complying with the terms of the contract. Such information may be ion the form of a standard operating or users manual.

(3) A Federal credit union, in addition to regular payments for services as provided under the contract, shall not pay in advance the actual or estimated charges for more than 3 months' services. Where such advance payment is made it shall be amortized over a period not in excess of the period of the written agreement.

(c)(1) Requests for approval shall be submitted to the Regional Director in writing with a copy of the contract and all pertinent facts in support of the proposal not later than 60 days priopr to the proposed implementation of the contract. A Federal credit union shall notify the Regional Director in writing within 30 days of the termination of the contract.

(2) The Regional Director will investigate each request to participate in a credit u nion service center activity and will make a recommendation as to whether it should be approved or disapproved. The request, contract and the recommendation of the Regional Director shall be forwarded to the Board, who shall approve or disapprove the application. The Regional Director will be informed of the Board's action on the application and will promptly notify the Federal credit union concerned.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, the Regional Director may approve a Federal credit union's request supported by a standard contract of the same service center which has received prior approval by the Board in accordance with the provisions of paragraph (c)(2) of this section.

(d) No official or employee of a participating Federal credit union may have a pecuniary interest in the credit union service center pursuant to this section. No official of a participating Federal credit union may receive from the vendor of such services any salary or compensation other than the reimbursement of necessary expenses incurred in connection with the vendor's activities.

§701.27-1 Purchase and sale of accounting services.

(a) For the purposes of this section:

(1) "Accounting services" means the maintenance of bookkeeping, accounting, or other records related to the purposes and functions of a credit union, by manual, mechanical, or electronic methods, and the furnishing of reports and information derived from such records.

(b) A Federal credit union may purchase accounting services for the maintenance of all or a portion of its accounting records. Any purchase of accounting services shall be evidenced by a written agreement, the terms and conditions of which shall expressly include a provision requiring compliance with §701.14, and a provision requiring the vendor to make any accounting records of the Federal credit union in his possession immediately available for examination by the Board.

(c) A Federal credit union purchasing accounting services shall notify the Regional Director in writing of the arrangement at least 30 days prior to the date on which such services shall commence. Such notice shall disclose the name and address of the vendor and information with respect to the records to be maintained and the method to be used. A Federal credit union shall notify the Regional Director in writing at least 30 days prior to the discontinuance of the arrangement.

(d) A Federal credit union, in addition to regular payments for services as provided under the written agreement, shall not pay in advance the actual or estimated charges for more than 3 months' services. Where such advance payment is made it shall be amortized over a period not in excess of the period of the written agreement.

(e) No official or employee of a Federal credit union shall be engaged directly in the management or operation of the accounting services purchased pursuant to this section, except where the vendor of such services is the sponsor of such credit union or is owned and operated by

or controlled by one or more credit union leagues. However, in no event shall an official or employee of a Federal credit union receive from the vendor of such services any salary or compensation other than the reimbursement of necessary expenses incurred in connection with the vendor's activities, unless the vendor, who is also the sponsor of the credit union, regularly employs such official or employee.

(f) A Federal credit union utilizing data processing for the maintenance of its own accounting records may lease or sell its software. It may also sell data processing capacity ion exces of its own immediate needs; however, total proceeds derived from the sale of such excess capacity shall, unless otherwise provided for by the Board, be limited to ten percent (10 percent) of its total operating income. All contracts for the sale or lease of software and sale of data processing capacity in excess of the immediate needs of the credit union shall be in writing and shall have the prior approval of the Regional Director. Request for such approval should be submitted to the Regional Director together with all pertinent facts in support of the proposal not later than sixty (60) days prior to the proposed effective date of contract.

§701.27-2 Credit Union Service Corporation.

(a) For purposes of this section:

(1) A "credit union service corporation," an organization described at Section 107(7)(I) of the Federal Credit Union Act, and a "credit union organization," as described at Section 107(5)(D) of the Federal Credit Union Act, are identical entities. They are organizations incorporated under State law which are wholly-owned and controlled by credit unions. Designation as a "credit union service corporation" is contingent on Administration approval.

(2) A "Federal credit union" means a credit union chartered pursuant to Section 109 of the Federal Credit Union Act, its officers, directors, employees, agents or representatives.

(b) The purpose of a credit union service corporation is to provide only those goods and services and perform only those functions that are associated with routine credit union operations. It may provide any or all of the following to its stockholder credit unions:

(1) data processing services;

(2) promotion, marketing and general management support services;

(3) access to sophisticated accounting systems;

(4) non-profit debt counseling services;

(5) management training and education to credit union personnel;

(6) services related to processing, selling or servicing mortgage loans;

(7) credit card services;

(8) automated teller machine services; and

(9) other services, as determined by the Board, that are commonly associated with the routine operations of credit unions.

(c) A Federal credit union, group of Federal credit unions, or a group of Federal and State credit unions may agree to form a credit union service corporation and submit an application to the Board for approval to form such a corporation. The application shall include:

(1) the articles of incorporation and by-laws of the proposed credit union service corporation which explicitly state that the credit union service corporation shall:

(i) provide services to each of its credit union stockholders and provide that each Federal credit union stockholder must purchase services within 6 months of its purchase of stock, and thereafter, in a manner which is normal for the service provided;

(ii) charge service fees to each party using services which are sufficient to cover the cost of services used by each;

(iii) have authority to provide services to nonstockholders, provided the total fees for services paid by nonstockholders during the current fiscal year shall not exceed 20% of the previous fiscal year's cost of operation;

(iv) provide the following statement prior to any party lending funds to or investigating funds in the corporation:

"THE DESIGNATION OF _____ AS A 'CREDIT UNION SERVICE CORPORATION', BY THE NATIONAL CREDIT UNION ADMINISTRATION DOES NOT INDICATE APPROVAL OF THE FINANCIAL CONDITION OF THE CORPORATION OR THE MERITS OF ANY LOAN TO OR INVESTMENT IN THE CORPORATION";

(v) be subject to examination by the Board or its authorized representative; and

(vi) submit call reports upon request by the Board.

(2) written acknowledgement that any official and/or employee of a Federal credit union with an equity interest in a credit union service corporation shall have no direct or indirect pecuniary interest in the corporation and no official of a Federal credit union shall receive any salary or compensation other than reimbursement for necessary expenses incurred in operating the credit union service corporation; and

(3) any other information requested by the Board.

(d) The Board may terminate the designation of any corporation as a credit union service corporation if it operates in an unsafe and unsound manner, violates the conditions of its approval as a credit union service corporation, or violates any applicable provision of the Federal Credit Union Act or National Credit Union Administration Rules and Regulations. When such designation is terminated, any constituent Federal credit union shall be required to divest its stock in the credit u nion service corporation in a manner and within a time frame appropriate to individual circumstances as determined by the Board. A Federal credit union shall not renew or extend any loans or balances outstanding under a line of credit to a credit union service corporation after receiving notice requiring divestiture of its stock in the corporation.

(e) A Federal credit union may invest, in total, up to 1 per centum of its paid-in and unimpaired capital and surplus in stock of credit union service corporations. A Federal credit union may lend, in total, an additional 1 percent of its paid-in and unimpaired capital and surplus only to credit union service corporations in which it has invested. Such investment authority does not include authority to invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility, financial institution or any other similar organization, corporation, association, or to lend funds to these entities, except as otherwise expressly provided in the Federal Credit Union Act.

(f) The following procedures apply to any application made under the provisions of this section:

(1) Application for approval as a credit union service corporation shall be submitted to the appropriate Regional Office and shall contain the information described in paragraph (c) of this section;

(2) application for approval to form a credit union service corporation that will engage in any of the activities desired in paragraph (b)(1)-(8) of this section shall be acted upon by the Board within a 45 day period that begins on the date of receipt by the Regiuonal Office of the complete written record on the application. In the event of the faulure of the Board to act on such an application within 45 days, the application shall be deemed to be approved. Action on any application shall be deemed to have been taken when written notice is received by the applicant;

(3) application for approval to form a credit union service corporation that will not perform any of the activities described in paragraph (b)(1)-(8) of this section shall be acted upon in the same manner as an application described in paragraph (f)(2) of this section except, that such action must be taken within 90 days of receipt of a complete record on the application;

(4) any addition to the functions performed or the goods and services provided by an approved credit union service corporation must be approved prior to implementation. Any addition involving engaging *de novo* in activities described in paragraph (b)(1)-(8) of this section shall be acted upon within 45 days, pursuant to paragraph (f)(2) of this section. Any addition involving engaging *de novo* in any activities not described in paragraph (b)(1)-(8) of this section shall be acted upon within 90 days, pursuant to paragraph (f)(3) of this section; and

(5) all time periods in Section (f) shall be exclusive of Saturdays, Sundays, and Federal holidays.

§701.28 Joint operations and activities.

(a) A Federal credit union may agree with one or more other credit unions to share quarters and to carry on business operations either individually or jointly. The agreement, which shall be in writing and which shall have the prior approval of the Board, shall provide that: (1) The assets and records of each credit union shall be completely segregated; (2) the individual identity of each credit union will be clearly maintained; (3) the joint costs will be shared equitably; (4) with respect to joint operations, centralized management controls will be

maintained over joint personnel and facilities which, nevertheless, permit each credit union to retain its responsibility for carrying on its own business.

(b) Requests for approval should be submitted to the Regional Director in writing together with a copy of the agreement and all pertinent facts in support of the proposal not later than 30 days prior to the proposed implementation of the agreement.

§701.29 Deleted June 1979.

§701.30 Safe deposit box service.

(a) A Federal credit union may lease safe deposit boxes to its members and may charge a fee which does not exceed the direct and indirect costs incident to providing this service.

(b) The safe deposit boxes will be located in a vault/safe on the premises where the credit union maintains an office for the transaction of business with its members. Space will be provided whereby the tenants or deputies, if any, can have access to the contents of their specific safe deposit boxes in private. The vault/safe and safe deposit boxes shall meet the minimum construction and safety standards specified by the insurance company writing the liability insurance mentioned in paragraph (c)(6) of this section. Where a vault is used, such vault may also be used for additional purposes: Provided, That the portion to be used for the safe deposit boxes is physically separated by means of a steel wall, gate, or similar partition: And provided further, That the door between the two sections have a two-key arrangement (one in the possession of the safe deposit box attendant and the other in possession of the credit union employee seeking access to the vault).

(c) Adequate records and safeguards will be maintained for the proper protection of both the Federal credit union and the members utilizing the service. Among such records and safeguards will be:

(1) The lease of a safe deposit box shall be in writing and among other provisions shall provide for the signatures of the tenants and their deputies, if any, who are to have access to the safe deposit box.

(2) The lease shall also specify the maximum amount of damages of the tenant for which the landlord (credit union) might be legally liable.

(3) A written record will be maintained which will show the time and date of entry and the signature of the authorized person (tenant or deputy) each time access is made to a safe deposit box.

(4) Two different types of keys will be used to open each safe deposit box. One type of key will be retained by the landlord (credit union) and the other type by the tenant or his deputy, if any.

(5) Tenants or deputies will not be permitted to enter the safe deposit vault unless they are accompanied by a vault attendant employee of the landlord (credit union) who will participate in opening the safe deposit box by utilization of the key retained by the landlord (credit union).

(6) The Federal credit union, to the extent necessary in addition to its regular surety bond coverage rquired by §701.20, will carry insurance which will:

(i) Fully protect the credit union against any and all legal liabilities pertaining to the rental of safe deposit boxes and in an amount at least equal to the total maximum amount of damages which might be incurred under all the safe deposit box leases currently in effect, and

(ii) fully protect the tenant from loss not covered by legal liability of the landlord (credit union) in an amount at least equal to the maximum legal liability of the landlord (credit union) as specified in the lease.

§701.31 Nondiscrimination requirements.

(a) Definitions: As used in this part, the term:

(1) 'application' carries the meaning of that term as defined in 12 C.F.R. 202.2(f) (Regulation B), which is as follows: "An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested";

(2) 'dwelling' carries the meaning of that term as defined in 42 U.S.C. 3602(b) (Fair Housing Act), which is as follows: "Any building, structure, or portion thereof which is occupied

as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof"; and

(3) 'real estate related loan' means any loan for which application is made to finance or refinance the purchase, construction, improvement, repair, or maintenance of a dwelling.

(b) *Nondiscrimination in Lending:*

(1) A Federal credit union may not deny a real estate related loan, nor may it discriminate in setting, or exercising its rights pursuant to, the terms or conditions of such a loan, nor may it discourage an application for such a loan, on the basis of the race, color, religion, sex, or national origin of:

(i) Any applicant or joint applicant;

(ii) Any person associated, in connection with a real estate related loan application, with an applicant or joint applicant;

(iii) The present or prospective owners, lesses, tenants, or occupants of the dwelling for which a real estate related loan is requested;

(iv) The present or prospective owners, lesses, tenants, or occupants of other dwellings in the vicinity of the dwelling for which a real estate related loan is requested.

(2) With regard to a real estate related loan, a Federal credit union may not consider a lending criterion or exercise a lending policy which has the effect of discriminating on the basis of race, color, religion, sex, or national origin. Guidelines concerning possible exceptions to this provision appear in Section 701.31(e)(1) of this Part.

(3) Consideration of any of the following factors in connection with a real estate related loan is not necessary to a Federal credit union's business, generally has a discrimfinatory effect, and is therefore prohibited:

(i) the age or location of the dwelling;

(ii) zip code of the applicant's current residence;

(iii) previous home ownership;

(iv) the age or location of dwellings in the neighborhood of the dwelling;

(v) the income level of residents in the neighborhood of the dwelling.

(c) *Nondiscrimination in Appraisals:*

(1) A Federal credit union may not rely upon an appraisal of a dwelling if it knows or should know that the appraisal is based upon consideration of the race, color, religion, sex, or national origin of:

(i) Any applicant or joint applicant;

(ii) Any person associated, in connection with a real estate related loan application, with an applicant or joint applicant;

(iii) The present or prospective owners, lessees, tenants, or occupants of the dwelling for which a real estate related loan is requested;

(iv) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling for which a real estate related loan is requested.

(2) With respect to a real estate related loan, a Federal credit union may not rely upon an appraisal of a dwelling if it knows or should know that the appraisal is based upon consideration of a criterion which has the effect of discriminating on the basis of race, color, religion, sex, or national origin. Guidelines concerning possible exceptions to this provision appear in Section 701.31(e)(1) of this Part.

(3) A Federal credit union may not rely upon an appraisal that it knows or should know is based upon consideration of any of the following criteria, for such criteria generally have a discriminatory effect, and are not necessary to a Federal credit union's business:

(i) the age or location of the dwelling;

(ii) the age or location of dwellings in the neighborhood of the dwelling;

(iii) the income level of residents in the neighborhood of the dwelling.

(4) Notwithstanding paragraph (c)(3) of this section, it is recognized that there may be factors concerning location of the dwelling which can be properly considered in an appraisal. If any such factor(s) is relied upon, it must be specifically documented in the appraisal, accompanied by a brief statement demonstrating the necessity of using such factor(s). Guidelines concerning the consideration of location factors appear in Section 701.31(e)(3) of this Part.

(5) Each Federal credit union shall make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member's real estate related loan application. The appraisal shall be available for a period of 25 months after the applicant has received notice from the Federal credit union of the action taken by the Federal credit union on the real estate related loan application.

(d) *Nondiscrimination in advertising:*

(1) *Advertising notice of nondiscrimination compliance.* (i) No Federal credit union may directly or indirectly engage in any form of advertising of real estate related loans which

implies or suggests that the Federal credit union discriminates in violation of the provisions of the Fair Housing Act of 1968 or of this Part. Advertisements of such loans shall include a facsimile of the following:

EQUAL HOUSING
LENDER

We Do Business in Accordance With the
Federal Fair Housing Law and the
Equal Credit Opportunity Act

EQUAL HOUSING
LENDER

We Do Business in Accordance With the
Federal Fair Housing Law and the
Equal Credit Opportunity Act

IT IS ILLEGAL, BECAUSE OF THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, OR AGE OF ANY PERSON, OR BECAUSE A PERSON RECEIVES INCOME FROM A PUBLIC ASSISTANCE PROGRAM, OR HAS IN GOOD FAITH EXERCISED ANY RIGHTS UNDER THE CONSUMER CREDIT PROTECTION ACT, TO:

- Deny a loan, including a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of a loan.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU MAY SEND A COMPLAINT TO:

NATIONAL CREDIT UNION ADMINISTRATION
Office of Consumer Affairs
Washington, D.C. 20456

or

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

(ii) Advertisements of real estate related loans which are broadcast on the radio shall contain the following statement: "The [insert name] Federal Credit Union is an equal housing lender.

(2) *Lobby notice of nondiscrimination compliance.* Every Federal credit union which engages in real estate related lending shall conspicuously display in the public lobby of such credit union and in the public area of each office where such loans are made, in a manner so as to be clearly visible to the general public entering such lobby or area, a notice that incorporates a facsimile of the logotype and notice appearing in paragraph (d)(3) of this section. Posters containing this notice and logotype may be obtained from the regional offices of the National Credit Union Administration.

(3) *Logotype and notice of nondiscrimination compliance.* The logotype and text of the notice required in paragraph (d)(2) of this section shall be as follows:

We do business in accordance with the Federal Fair Housing Law and the Equal Credit Opportunity Act.

It is illegal, because of the race, color, religion, sex, national origin, marital status, or age of any person, or because a person receives income from a public assistance program, or has in good faith exercised any rights under the Consumer Credit Protection Act, to:

Deny a loan, including a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or

Discriminate in fixing the amount, interest rate, duration, application procedures or other terms or conditions of a loan.

If you believe you have been discriminated against, you may send a complaint to: National Credit Union Administration, Office of Consumer Affairs, Washington, D.C. 20456, or U.S. Department of Housing and Urban Development, Assistant Secretary for Fair Housing and Equal Opportunity, Washington, D.C. 20410.

(e) *Guidelines:*

(1) Compliance with the Fair Housing Act is achieved when each loan applicant's creditworthiness is evaluated on an individual basis, without presuming that the applicant has certain characteristics of a group. If certain lending policies or procedures do presume group characteristics, they may violate the Fair Housing Act, even though the characteristics are not based upon race, color, sex, religion, or national origin. Such a violation occurs when otherwise facially nondiscriminatory lending procedures (either general lending policies or specific criteria used in reviewing loan applications) have the effect of making real estate related loans unavailable or less available on the basis of race, color, sex, religion, or national origin. Note, however, that a policy or criterion which has a discriminatory effect is not a violation of the Fair Housing Act if its use achieves a legitimate business necessity which cannot be achieved by using less discriminatory standards. (See *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975) and *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).)

It is also important to note that the Equal Credit Opportunity Act and Regulation B prohibit discrimination, either *per se* or in effect, on the basis of the applicant's age, marital status, receipt of public assistance, or the exercise of any rights under the Consumer Credit Protection Act.

(2) Paragraph (b)(3) of this section prohibits consideration of certain factors because of their likely discriminatory effect and because they are not necessary to make sound real estate related loans. For purposes of clarification, the prohibited use of location factors in this section is intended to prevent abandonment of areas in which a Federal credit union's members live or want to live. It is not intended to require loans in those areas that are geographically remote from the FCU's main or branch offices or that contravene the parameters of a Federal credit union's charter. Further, this prohibition does not preclude requiring a borrower to obtain flood insurance protection pursuant to the National Flood Insurance Act and Part 760 of NCUA's Rules and Regulations, nor does it preclude involvement with Federal or state housing insurance programs which provide for lower interest rates for the purchase of homes in certain urban or rural areas. Also, the legitimate use of location factors in an appraisal does not constitute a violation of the provision of paragraph (b)(3) of this section, which prohibits consideration of location of the dwelling.

Finally, the prohibited use of prior home ownership does not preclude a Federal credit union from considering an applicant's payment history on a loan which was made to obtain a home. Such action entails consideration of the payment record on a previous loan in determinating creditworthiness, it does not entail consideration of prior home ownership.

(3)(i) Paragraph (c)(3) of this section prohibits consideration of the age or location of a dwelling in a real estate related loan appraisal. These restrictions are intended to prohibit the use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Appraisals should be based on the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan.

(ii) The term 'age of the dwelling' does not encompass structural soundness. In addition, the age of the dwelling may be used by an appraiser as a basis for conducting further inspections of certain structural aspects of the dwelling. Paragraph (c)(3) of this section does, however, prohibit an unsubstantiated determination that a house over X years in age is not structurally sound.

(iii) With respect to location factors, paragraph (c)(4) of this section recognizes that there may be location factors which may be considered in an appraisal, and requires that the use of any such factors be specifically documented in the appraisal. These factors will most often be those location factors which may negatively affect the short range future value (up to 3-5 years) of a property. Factors which in some cases may cause the market value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not affect the market values of a property because the cause of abandonment is unrelated to high risk. Proper considerations include the condition and utility of the improvement and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and

municipal services, and exposure to flooding and land faults.

§701.32 Payments on shares by public units.

(a) A Federal credit union may receive payments on shares from the following member or nonmember units of Federal, state or local governments:

(1) An officer, employee, or agent of the United States having official custody of public funds and lawfully investing such funds in a Federal credit union;

(2) An officer, employee, or agent of any state of the United States or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a Federal credit union;

(3) An officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing the same in a Federal credit union; or

(4) An officer, employee, or agent of the Commonwealth of Puerto Rico, of the Panama Canal Zone, or of any territory or possession of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a Federal credit union.

(b) Withdrawal of shares held in public unit accounts may be subject to the requirement providing for written notice, not to exceed 60 days, of intention to withdraw the whole or any portion of such shares. In the event notice is required, the Federal credit union shall communicate such requirement to the party having official custody of the funds prior to the acceptance of such funds by the Federal credit union.

(c) The maximum amount of each account established pursuant to this section shall not exceed 5 per centum of the total assets of the Federal credit union at the time of the share payment and no share payments shall be accepted in an amount which would cause the aggregate amount of all such accounts to exceed 20 per centum of the total assets of the Federal credit union.

(d) The term "public unit" means the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, any municipality, or political subdivision thereof.

(e) The term "political subdivision" includes any subdivision or principal department of a public unit, (1) the creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts crated by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

§701.33 Compensation of officials.

(a) With the exception of the treasury, no director or member of a credit committee or supervisory committee may receive compensation for performing the duties or responsibilities of the board or committee position to which the person was elected or appointed.

(b) For purposes of this section, the term "compensation" specifically excludes (1) reasonable and proper costs incurred by or on behalf of an official (whether on a reimbursement basis or paid directly by the credit union) in carrying out the responsibilities of the position to which the person was elected or appointed; and (2) reasonable health and accident and related types of personal insurance protection supplied for the above officials at the expense of the credit union: Provided, That such insurance protection shall exclude life insurance, shall be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by virtue of carrying out the duties or responsibilities of his or her credit union position and shall cease immediately when the insured person leaves office without providing residual benefits other than from pending claims, if any.

§701.34 Deleted December 1980.

§701.35 Share, Share Draft and Share Certificate Accounts.

(a) Definitions—as used in this Section:

(1) Share Account means:

(i) Regular Share Account—an account which does not require the holder to maintain a balance greater than the par value of a share or to give notice of intent to withdraw, except as may be imposed in accordance with the Federal Credit Union Bylaws, and that qualifies for a dividend; or

(ii) Any other account that is not, by definition, either a regular share, share draft or share certificate account.

(2) Share Draft Account means an account from which the holder is authorized to withdraw shares by means of a negotiable or transferable instrument or other order.

(3) Share Certificate Account means:

(i) An account that will earn dividends at a particular rate if held to maturity and on which a penalty shall be assessed for any premature withdrawal. Additions shall reset the maturity of the entire account for a term equal to the original qualifying period; or

(ii) An account that will earn dividends at a particular rate provided:

(A) A notice of a minimum of 90 days of intent to withdraw on a specified date is required;

(B) A penalty is assessed for failure to provide a minimum of 90 days notice; and

(C) Regular additions are made to the account for the duration of the qualifying period pursuant to a written contract or savings plan. Additions to this type of account shall not reset the maturity of the entire account for a term equal to the original qualifying period.

(4) Premature Withdrawal means:

(i) The withdrawal of all or any portion of the principal amount prior to maturity, or

(ii) The withdrawal of all or any portion of the principal amount prior to providing any required notice.

(5) Truncation means the original negotiable or transferable instrument is not returned to the drawer.

(b) Issuance of Share, Share Draft and Share Certificate Accounts

(1) The board of directors, by resolution, may establish share and share draft accounts with different dividend rates and share certificate accounts with different dividend rates and maturities in conformance with the following:

(i) Any terms and conditions prescribed by the board of directors concerning the issuance and maintenance of share, share draft and share certificate accounts must be consistent with the requirements of this section;

(ii) No dividend may be paid unless sufficient earnings are available at the end of the dividend period; and

(iii) A regular share account as defined in paragraph (a)(1)(i) must be available to all members, either as a separate account or in combination with other account features adopted by the board.

(2) Share and share certificate accounts offered shall be made available to all members on an equal basis. Share draft accounts shall be made available to members subject to operational feasibility and reasonable disapproval criteria as described in written board policy.

Special share certificate accounts may be established for funds deposited to the credit of, or in which the entire beneficial interest is held by, an individual pursuant to an Individual Retirement Account agreement or Keogh Plan as provided for by Section 721.4. Such special share certificate accounts shall be made available on an equal basis to all members who qualify. No officer, director, member of the credit or supervisory committees, employee, or other official appointed or elected, shall be holder of a share, share draft or any type of share certificate account unless all qualifying members of the credit union are given an equal opportunity to become holders of such accounts.

(3) Share, share draft and share certificate accounts shall be subject to any notice which may be imposed pursuant to the Federal Credit Union Bylaws.

(c) Share Draft Accounts

(1) In addition to the general requirements set forth in this Section applicable to the establishment and maintenance of share draft accounts the board of directors shall provide for:

(i) truncation;

(ii) surety bond coverage;

(iii) establishing a share draft account agreement with each member that outlines both credit union and member responsibilities;

(iv) retaining copies or photo reproductions of paid share drafts or other evidence of paid orders of withdrawal on file for a period of five years or as required by applicable state law, whichever is greater; and

(v) written operational and program specifications on file at the credit union's principal office.

(2) The board of directors may provide for:

(i) fees to be assessed for share draft account usage;

(ii) an experimental share draft program with terms and conditions that restrict the number of share draft accounts and are otherwise not inconsistent with the requirements of this section for a period not to exceed one year; except, however, the advertising and disclosure requirements shall not be waived and the maximum dividend rate for share draft accounts shall not exceed the rate paid on its regular share account; and

(iii) participation in guarantee arrangements, provided, however, that a Federal credit union participating in a guarantee arrangement adopts an appropriate amendment to Article III, Section 5(a) of the Federal Credit Union Bylaws.

(d) Limitations on Share Certificate Accounts

(1) Qualifying periods shall not be less than 14 days nor more than 6 years.

(2)(i) Upon maturity, share certificate accounts may be automatically renewed at the same terms and conditions as initially issued, or as may be otherwise provided for in accordance with a written agreement between the holder and the credit union. Notice of any such renewal, changes in the terms and conditions, or expiration of the qualifying period (in addition to the disclosure requirements set forth in subsection (1)) shall be provided at least 10 days prior to the expiration of the qualifying period, except accounts with qualifying periods of less than 90 days.

(ii) The share certificate account agreement may provide for the payment of dividends on withdrawals made not more than 7 days after the maturity date. The agreement may specify that the dividends will be paid at the originally specified dividend rate or at a lower rate but in no event may the rate specified be less than the current rate paid on regular share accounts.

(3)(i) In case of a premature withdrawal of the principal amount which reduces the balance below any required minimum amount, the account shall be cancelled and a penalty pursuant to subsection (e) of this section shall be imposed upon the entire amount evidenced by the share certificate account. If the required minimum amount continues to be met, a penalty pursuant to subsection (e) of this section shall be imposed upon the amount withdrawn (and not upon the remaining balance) and either:

(1) an appropriate notation may be made on the account indicating the amount and date of the withdrawal and the remaining balance, or

(2) the account may be cancelled and a new account issued.

(ii) A share certificate account holder may withdraw any and all dividends previously paid on a share certificate account during its current qualifying period without incurring a penalty. If the share certificate account is automatically renewed at the same terms and conditions (including the same dividend rate), a Federal credit union may permit a share certificate account holder to withdraw dividends paid during the preceding qualifying period or periods at any time during the renewal period without

penalty, unless the share certificate agreement provides otherwise. If any term or condition of the renewal certificate is different, dividends in the account at the commencement of the renewal period shall be treated as principal and subject to the penalty provisions for early withdrawal. Any amendment to a share certificate account that results in an increase in the dividend rate or a reduction in the qualifying period constitutes a payment of the account before maturity.

(e) Penalty Provisions

(1) Penalties imposed shall be on the actual dividend earned, and shall not be imposed on the principal amount held in a share account or share certificate account. In assessing any applicable penalty, however, the amount of the penalty may be deducted from the principal amount if the dividends upon which the penalty is assessed have been previously withdrawn.

(2) The board of directors may establish a penalty to be imposed for failure to comply with any terms or conditions of a share account, other than a regular share account, and a share certificate account.

(3) The board of directors shall establish a penalty to be imposed for premature withdrawal from a share certificate account. The penalty established shall, at a minimum, require:

(i) If the qualifying period is one year or less the member shall forfeit an amount equal to the lesser of:

(A) All dividends for 90 days on the amount withdrawn, or

(B) All dividends on the amount withdrawn since the date of issuance or renewal.

(ii) If the qualifying period is greater than one year, the member shall forfeit an amount equal to the lesser of:

(A) All dividends for 180 days on the amount withdrawn, or

(B) All dividends on the amount withdrawn since the date of issuance or renewal.

(f) Exceptions to the Penalties—Penalties shall not be applied if:

(1) The withdrawal is made subsequent to the death of any owner of the share, share draft or share certificate account or is made pursuant to Article III, Section 5(e) of the Federal Credit Union Bylaws;

(2) The share or share certificate account is part of a pension plan which qualifies or qualified for specific tax treatment under Section 401(d) or 408 of the Internal Revenue Code and withdrawal is made following the participant's death or disability (as determined under 26 U.S.C. 72(m)(7)) or upon attaining not less than 59½ years of age; or

(3) Such withdrawal is made as a result of the voluntary or involuntary liquidation of the Federal credit union issuing the account.

(g) Rate Specified or Contracted For In Advance.

(1) If specified or contracted for in advance, the dividend rate shall:

(i) For regular share accounts, be expressed as either a single dividend rate or for regular share accounts that earn differing rates for differing balances, each rate shall be expressed; and

(ii) For the remaining types of share, share draft and share certificate accounts, be expressed as

(A) A percentage above or below the dividend rate declared for regular share accounts, or

(B) A single dividend rate.

(h) Maximum Dividend Rate—A Federal credit union may pay a maximum dividend, expressed as an annual rate, as follows:

(1) 7% on a share or share draft account;

(2) On a share certificate account, except as otherwise provided in this subsection, that is issued on or after Thursday or every other week up to the greater of (1) 9½%, or (2) the lesser of 12% or the average 2½–year yield for United States Treasury securities, as determined and announced by the United States Department of Treasury immediately prior to such Thursday;

(3) On a share certificate account, except as otherwise provided in this subsection, which represents an investment of retirement account funds pursuant to Section 721.4 or of public unit funds pursuant to Section 701.32, that is issued on or after Thursday of every other week, up to the greater of (1) 9½%, or (2) the lesser of 12% or the average 2½–year yield for United States Treasury securities, as determined and announced by the United States Department of Treasury immediately prior to such Thursday;

(4) A rate determined by money market conditions on a share certificate account of $100,000 or more; or

(5) In the case of a share certificate account of $10,000 or more having a fixed term or qualifying period of 26 weeks, the maximum dividend rate, which may be rounded off only by rounding down, shall be the greater of the rate

authorized in paragraph (2) of this subsection or one quarter of one percent above the discount rate (auction average on a discount basis) for 26 weeks United States Treasury bills issued on or immediately prior to the date of purchase of the share certificate. If such dividend rate is based upon the discount rate, no compounding of dividends is permitted.

(i) Dividend Periods—The board of directors may vary dividend periods for differing share, share draft and share certificate accounts. Share certificate accounts which mature between dividend periods shall be entitled to dividends at the rate declared for that type of certificate at the close of the last dividend period before maturity.

(j) Dividends Calculated on Par Value or Actual Value

A Federal credit union may calculate dividends to be paid on share, share draft and share certificate accounts either upon the par value of shares or upon the actual value held in the accounts.

(k) Advertising

In addition to the advertising requirements established in Part 740 of the Rules and Regulations (12 C.F.R. Part 740) and elsewhere in this section, the following rules shall apply to every advertisement, announcement, or solicitation relating to share, share draft, and share certificate accounts.

(1) Where a dividend rate is specified or contracted for in advance:

(i) Any terms and conditions necessary to earn that dividend at that rate shall be stated, including, for share draft accounts, a clear and conspicuous statement that effective yield may be less than the rate stated depending upon account activity or the actual amount of shares upon which dividends will be paid.

(ii) A clear and conspicuous notice shall be included indicating that the specified or contracted rate shall not be paid if available earnings are insufficient. Such notice shall state "NOTICE: Dividends are based on the credit union's earnings at the end of a dividend period and cannot be guaranteed.";

(iii) The basis upon which dividends will be paid;

(iv) A clear and conspicuous notice stating that Federal regulations prohibit the compounding of dividends during the qualifying period shall be included in the case of share certificates issued pursuant to paragraph (h)(5) which are based upon the discount rate.

(2) Where a penalty will be imposed for failure to comply with any term or condition, a clear and conspicuous notice shall be included. Such notice may state "A substantial penalty is required for failure to comply with these requirements."

(3) Where a percentage yield achieved by compounding dividends during one year is stated, the annual rate of dividends without the effect of compounding shall be stated with equal prominence, together with a reference to the basis of compounding and the basis for calculating dividends (either on par value or actual value). The percentage yield based on the effect of grace periods shall not be stated.

(l) Disclosures

(1) At the time that a Federal credit union issues any share, share draft or share certificate account, the holder of the account shall be individually provided, to the extent applicable, with a written statement setting forth the following which shall be in addition to any other disclosures required by law or regulation:

(i) Any terms or conditions which must be met for the share, share draft or share certificate account to earn dividends at a particular rate, including the fact that shares withdrawn before the end of a dividend period may not earn dividends for that entire dividend period.

(ii) The basis of compounding, the basis upon which dividends will be paid and the effect of premature withdrawal;

(iii) That Federal regulations prohibit the guarantee of dividends as dividends are based upon available earnings at the end of a dividend period, and in the case of share certificates issued pursuant to paragraph (h)(5) which are based upon the discount rate, the Federal regulations prohibit the compounding of dividends during the qualifying period;

(iv) Any penalty imposed for the failure to comply with any terms and conditions;

(v) Any provisions relating to automatic renewal of share certificate accounts;

(vi) The disposition of the funds in a share certificate account if it is not renewed;

(vii) Membership in the Federal credit union will terminate upon maturity of a share certificate account, unless renewed, if the holder does not have or establish a share, share draft or share certificate account in addition to the share certificate account which is maturing;

(viii) Applicable grace period, if any, and its terms and conditions, including the fact that shares purchased during a grace period will earn dividends for the entire grace period and, if applicable, that shares purchased after the grace period will receive no dividends for a specified period.

(ix) Whether or not changes in accounts require member approval and the time in which a member must be notified of any changes in account.

(x) Any fees that may be imposed for use of a share draft account.

(xi) Federal Credit Union Bylaws give the Federal credit union the authority to impose a notice of up to 60 days for withdrawal of shares.

(xii) For share draft accounts, a clear and conspicuous statement that a specified dividend rate may result in a lower effective yield based upon either account activity or the actual amount of shares on which dividends will be paid.

(2) A Federal credit union need not provide a written disclosure statement in connection with the renewal of an existing account. Notice must be sent to affected account holders of any change in any provision required to be disclosed.

(3) A copy of a standard disclosure statement for each class or type of account offered by a Federal credit union shall be provided upon request. If accounts other than regular share accounts are offered, a listing of the accounts available shall be prominently displayed in the Federal credit union's offices and shall indicate that a copy of a standard disclosure statement for each class or type of account is available upon request.

§701.36 FCU Ownership of Fixed Assets.

(a) Under section 107(4) of the Federal Credit Union Act a Federal credit union has the power to purchase, hold and dispose of property necessary or incidential to its operations. A Federal credit union's ownership of fixed assets shall be limited as described in this chapter.

(b) Definitions—As Used in This Section:

(1) Premises includes any office, branch office, sub-office, service center, parking lot, other facility or real estate where the credit union transacts or will transact business.

(2) Furniture, Fixtures, and Equipment includes all office furnishings (e.g., tables, chairs, desks, file cabinets, curtains, drapes, rugs, etc.), office machines, computer hardware and software, automated terminals, heating and cooling equipment.

(3) Fixed Assets means premises and furniture, fixtures and equipment as these terms are defined above.

(4) Investment in fixed assets means:

(i) any investment in real property (improved or unimproved) which is being used or is intended to be used as premises;

(ii) any leasehold improvement on premises;

(iii) the aggregate of the lease payments pursuant to a lease agreement on fixed assets;

(iv) any investment in the bonds, stock, debentures, or other obligations of a partnership or corporation holding any fixed assets used by the Federal credit union and any loans to such partnership or corporation; or

(v) any investment in furniture, fixtures and equipment.

(5) Abandoned premises means former Federal credit union premises from the date of relocation to new quarters, and property originally acquired for future expansion for which such use is no longer contemplated.

(c) Investment in Fixed Assets.

(1) No Federal credit union with $2,000,000 or more in assets, without the prior approval of the Administration, shall invest in fixed assets if the aggregate of all such investments exceeds 5 percent of assets. Certain investments in fixed assets such as those in section 701.36(b)(4)(iv) above are further limited as to approval and amount by sections 701.26, 701.27-1, 701.27-2, and 701.28 and sections 107(5)(D) and 107(7)(I) of the Federal Credit Union Act.

(2) A Federal credit union shall submit such statements and reports as the Administration may require in support of any investment in fixed assets in excess of the limit specified above. Such reports and statements shall include but not be limited to:

(i) a narrative, describing the proposal in terms of costs, usage, location, and method of financing;

(ii) current financial data; and

(iii) a proforma projected balance sheet and statements of income and expenses for each of the ensuing 5 years based upon the assumption that the proposal will be approved.

(3) If the Administration determines that the proposal will not adversely effect the credit union, an aggregate dollar amount or percentage of assets will be approved for investment in fixed assets. Once such a limit has been approved, a Federal credit union may make future acquisitions of fixed assets, provided, the aggregate of all such future investments in fixed assets does not exceed an additional 1 percent of the assets of the credit union over the amount approved.

(4) Federal credit unions shall submit their requests to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The regional office shall inform the requesting credit union, in writing, of the date the request was received. If the credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the regional office, the credit union may proceed with its proposed investment in fixed assets.

(5) Federal credit unions with assets of $2,000,000 or more that have investments in fixed assets in excess of 5 percent as of the effective date of this rule may honor existing (firm) commitments to acquire fixed assets without the Administration's approval; however, these Federal credit u nions must notify the appropriate NCUA regional office of the existence of such commitments within 30 days of the effective date of this rule.

(d) Premises.

(1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall not exceed 3 years unless otherwise approved in writing by the Administration. After real property acquired for future expansion has been held for 1 year, a board resolution with definitive plans for utilization must be available for inspection by the examiner.

(2) Investments in premises will be recorded on the credit union's books at the lower of cost or fair market value. The cost of land shall be carried on the books of the credit union in an account separate from the cost of improvements thereon. Unless otherwise approved in writing by the Administration, the cost of improvements shall be amortized over the estimated useful life or period of lease, whichever is less, through periodic charges to depreciation expense using any one of the generally accepted methods of depreciation, such as straight line or declining balance methods. The reverse sum-of-the-years digits method is not acceptable.

(3) The estimated useful life shall conform to guidelines prescribed by the Administration.

(4) For purposes of determining the periodic depreciation charge, the salvage value of improved real property shall be limited to 10 percent of the cost of the depreciable property (excluding the cost of land) unless a higher salvage value is determined by an independent qualified appraiser at the time of acquisition.

(5) A Federal credit union shall endeavor to dispose of "abandoned premises" at a price sufficient to reimburse the Federal credit union for its investment and costs of acquisition. Current documents must be maintained reflecting the Federal credit union's continuing and diligent efforts to dispose of "abandoned premises." After "abandoned premises" have been on the Federal credit union's books for 4 years, the property must be publicly advertised for sale. Disposition must occur through public or private sale within 5 years of abandonment, unless otherwise approved in writing by the Administration.

(e) Furniture, Fixtures and Equipment.

(1) Investments in furniture, fixtures, and equipment will be recorded on the credit union's books at the lower of cost or fair market value. The cost of computer hardware and software shall be carried on the books of the credit union in an account separate from other items of furniture, fixtures, and equipment.

(2) The cost of furniture, fixtures, and equipment shall be amortized over the estimated useful life through periodic charges to depreciation expense using any of the generally accepted methods of depreciation. The reverse sum-of-the-years digits method is not acceptable.

(f) Prohibited Transactions.

(1) Except with the prior written approval of the Administration, no Federal credit union may acquire real property by investment in premises from any of the following:

(i) a director, member of the credit committee or supervisory committee, official or employee of the Federal credit union, or the

spouse of such director, member of the credit committee or supervisory committee, official or employee;

(ii) a corporation in which any director, member of the credit committee or supervisory committee, official or employee, or the spouse of such director, member of the credit committee or supervisory committee, official or employee is an officer or director, or has a stock interest of 10 percent or more;

(iii) a partnership in which any director, member of the credit committee or supervisory committee, official or employee, or the spouse of such director, member of the credit committee or supervisory committee, official or employee is a general partner, or a limited partner with an interest of 10 percent or more; or

(iv) a member of the immediate family of a director, member of the credit committee or supervisory committee, official or employee of the Federal credit union, living in the same household.

§701.37-1 Treasury Tax and Loan Accounts.

(a) 31 CFR Part 203, Department of Treasury Regulations states that every credit union insured by the National Credit Union Administration is eligible to be designated as a Treasury tax and loan (TT&L) depositary. The application procedures and requirements for designation as a TT&L depositary are as set forth in the Department of the Treasury Regulations.

(b) Definitions of Terms as Used in this Part:

(1) TT&L Remittance Account—means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations.

(2) TT&L Note Account—means an account subject to the right of immediate call, evidencing fu nds held by depositaries electing the note option under applicable U.S. Treasury Department regulations.

(c) Upon designation as a Treasury tax and loan depositary, a Federal credit union may establish a TT&L Remittance Account for the receipt of payments of Federal taxes and certain U.S. obligations. Funds in the TT&L Remittance Account are not eligible to receive dividends and are not subject to the 60 day notice requirement of Article III, Section 5 of Federal Credit Union Bylaws.

(d) Credit unions selecting the Note Option under 31 CFR Part 203.9 may hold funds in a TT&L Note Account in accordance with Department of Treasury Regulations. Funds held in the credit union's TT&L Note Account shall bear interest at the rate specified in the Department of Treasury regulations. Funds held in TT&L Note accounts are not considered borrowings for purposes of Section 107(9) of the FCU Act and are not subject to the 60 day notice requirement of Article III, Section 5 of Federal Credit Union Bylaws.

(e) The sum of the amounts held in the TT&L Remittance Account and the TT&L Note Account shall not exceed 10 per centum of the total assets of the credit union. This limit takes the place of the 5 percent individual account limitation imposed under 12 CFR 701.32(c). However, the 20 percent aggregate amount limit imposed on all public unit funds placed in Federal credit unions under 12 CFR 701.32(c) is applicable to all funds accepted by Federal credit unions in accordance with 31 CFR 203.

(f) For share insurance purposes, funds in the TT&L Remittance Account and the TT&L Note Account shall be considered public unit funds and as such are insured up to a maximum of $100,000 in the aggregate. The share insurance premium paid shall include a premium equal to one-twelfth of 1 per centum of the total amount of funds in the TT&L Remittance Account and the TT&L Note Account at the close of the preceding insurance year.

(g) A Federal credit union may pledge specifically identified assets as collateral for TT&L Remittance and Note Accounts and may enter into such custodial arrangements as may be necessary to meet Department of Treasury requirements for collateral on TT&L accounts.

§701.37-2 Federal Credit Unions Acting as Depositories and Financial Agents of the Government.

(a) 31 CFR 202, Department of Treasury Regulations states that a credit union insured by the National Credit Union Administration is

designated as a Depository and Financial Agent of the Government if it possesses, under its charter and the regulations issued by its chartering authority, either general or specific authority to perform the services outlined in 31 CFR 202.3(b). The credit union must also possess the authority to pledge collateral to secure public funds.

(b) A Federal credit union, when acting as a Depository or Financial Agent of the Government under the provisions of 31 CFR 202 has authority to:

(1) Maintain accounts as may be specified by the U.S. Treasury in which balances may exceed the insurance coverage provided for in Section 207(c)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(2)(A));

(2) Maintain accounts in the name of the United States Treasury. Such accounts may include:

(i) A Treasury General Account in which a zero balance may be maintained and from which the entire balance may be withdrawn by the depositor immediately, under all circumstances except closure of the credit union;

(ii) A U.S. Treasury Time Deposit—Open Account which may be non-interest bearing (non-dividend-paying), and which may be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury;

(3) Accept deposits to these accounts for the credit of the United States Treasury;

(4) Furnish drafts in exchange for collections in these accounts; and

(5) Pledge specifically identified assets as collateral to secure public funds under provisions specified in 31 CFR 202.6.

(c) For share insurance purposes, funds in a Treasury General Account and the U.S. Treasury Time Deposit—Open Account shall be considered public unit funds and as such, are insured up to a maximum of $100,000 in the aggregate. The share insurance premium paid shall include a premium equal to one-twelfth of 1 per centum of the total amount of funds in a Treasury General Account and U.S. Treasury Time Deposit—Open Account at the close of the preceding insurance year.

(d) Funds held in a U.S. Treasury Time Deposit—Open Account are not considered borrowings for purposes of Section 107(9) of the Federal Credit Union Act, and are not subject to the 60 day notice requirement of Article III, Section 5 of the Federal Credit Union Bylaws.

(e) The sum of the amounts held in the Treasury General Account and U.S. Treasury Time Deposit—Open Account shall not exceed 10 per centum of the total assets of the credit union. This limit takes the place of the 5 percent individual account limitation imposed under 12 CFR 701.32(c). However, the 20 percent aggregate amount limit imposed on all public unit funds placed in Federal credit unions under 12 CFR 701.32(c) is applicable to all funds accepted by Federal credit unions in accordance with 31 CFR 202.

§701.38 Borrowed Funds From Natural Persons.

(a) Federal credit unions may borrow from a natural person, PROVIDED:

(1) the borrowing is evidenced by a signed promissory note which sets forth the terms and conditions regarding maturity, prepayment, interest rate, method of computation, and method of payment;

(2) the promissory note and any advertisement for such funds contains conspicuous language indicating that:

(i) the note represents money borrowed by the credit union;

(ii) the note does not represent shares and, therefore, is not insured by the National Credit Union Share Insurance Fund; and

(3) the maturities, rates and denominations are consistent with those prescribed for share certificates in Section 701.35(c)(1) and 701.35(g) of this Part.

Part 702

Reserves

§702.1 Reserves.

Federal credit unions shall establish and maintain such reserves as may be required by the Act, or by regulation, or in special cases by the Board. A Federal credit union which has a Regular Reserve in excess of the greater applicable percent established by Section 116 of the Federal Credit Union Act may transfer the excess to a supplemental reserve or to the Undivided Earnings Account; provided, however, that such transfer is appropriately approved by the board of directors after careful consideration of the financial condition of the credit union, of present and anticipated future reserve needs, and of full and fair disclosure as set forth in §702.3.

§702.2 Regular Reserve.

(a) Each Federal credit union shall establish and maintain a Regular Reserve, as provided by Section 116 of the Federal Credit Union Act. The totals of the Regular Reserve Account and the Allowance for Loan Losses Account shall be combined for determining the applicable percentage of gross income to be transferred to the Regular Reserve.

(b) Charges to the Regular Reserve for loan losses shall be made in accordance with full and fair disclosure and as set forth in the Accounting Manual for Federal Credit Unions.

(c) (1) The Board may decrease the reserve requirements as set forth in Section 116 of the Act when, in its opinion, such decrease is necessary or desirable and, the Board may approve the charge of losses other than losses on loans to the Regular Reserve.

(2) Applications for approval to decrease the reserve requirements or to charge to the Regular Reserve losses other than losses on loans shall be made in writing to the Regional Director. The application shall:

(i) Be authorized by the board of directors;

(ii) State the need for a decreased transfer or state the amount, cause, and nature of the losses;

(iii) Be accompanied by a copy of the credit union's current statement of financial condition, and a copy of the current delinquent loan list. The Regional Director may request such other information as he may deem necessary.

§702.3 Full and fair disclosure required.

(a) "Full and fair disclosure" is the level of disclosure which a prudent person would provide to a member of a Federal credit union, the National Credit Union Administration, or, at the discretion of the board of directors, a creditor in order to fairly inform any or all of them of the financial condition and the results of operations of the credit union.

(b)(1) Federal credit union financial statements shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation allowance accounts as may be necessary to present fairly the financial position; and all income and expenses necessary to present fairly the results of operations for the period concerned.

(2) Full and fair disclosure will further be accomplished by (i) selecting one of the accounting bases provided for in the Accounting Manual for Federal Credit Unions which shall be either the modified cash basis or the accrual basis of accounting, and by (ii) use of appropriate financial statements described in the Accounting Manual for Federal Credit Unions, or financial statements of equivalent format.

(c)(1) The maintenance of a valuation allowance for loan losses shall not eliminate the requirement for transferring a percentage of gross income before the payment of each dividend to the regular reserve as required by section 116 of the Federal Credit Union Act.

(2) As a minimum, adjustments to the valuation allowance for loan losses shall be made prior to the distribution or posting of any dividend to the accounts of all the members so that the valuation allowance established fairly presents the value of loans and anticipated losses resulting from (i) uncollectable loans and notes and contracts receivable, including, where applicable, any uncollectable accrued interest receivable thereon; (ii) assets acquired in liquidation of loans, and (iii) loans purchased from othe credit unions.

(3)(i) Adjustments to the valuation allowance for loan losses will be recorded in the expense account "Provision for Loan Losses."

(ii) Whenever additions to the valuation allowance for loan losses cause a deficit in the regular reserve account, such deficits shall be transferred first to undivided earnings and, if this shall cause a deficit in undivided earnings, then to other segregations of undivided earnings that may exist, exclusive of the Special Reserve for Losses, should such be required by the Board in accordance with §702.1 of this Part. These amounts are eligible for return to undivided earnings as provided for in the Accounting Manual for Federal Credit Unions.

(iii) Dividends shall not exceed the amount available for that purpose after provisions have been made for the statutory transfer to the regular reserve account and the removal of any deficit in the regular reserve account.

(d) The Statement of Financial Condition, when presented to members, creditors or to the National Credit Union Administration, shall contain a dual declaration by the treasurer and by the president, or in the absence of the president, by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report and related financial statements are true and correct to the best of their knowledge and belief and present fairly the financial position and the results of operations for the period covered.

(e) Upon written application by the board of directors of a Federal credit union, the Board may waive, in whole or in part, the requirement for the maintenance of the valuation allowance for loan losses in amounts which are in excess of the statutory requirements of section 116 of the Federal Credit Union Act but are required under paragraph (c)(3)(ii) of this section. Such application shall set forth the justification for the requested waiver and shall be addressed to the appropriate Regional Director.

Part 703

Investments and Deposits

§703.1 Certificates of Deposit.

(a) A Federal credit union may invest in or make a deposit evidenced by a time certificate of deposit issued by any of those institutions enumerated in section 107(7)(D) and 107(8) of the Federal Credit Union Act: Provided,

(1) That such Federal credit union itself makes the investment or deposit for which the certificate is issued; and

(2) That no consideration is received from a third party in connection with the making of the investment or deposit.

(b) A Federal credit union may contract with the issuing institution for payment of the whole or a portion of a certificate of deposit before maturity.

(c) Certificates of deposit issued by those state chartered financial institutions enumerated in §107(8) of the Federal Credit Union Act may be obtained by a Federal credit union provided such institutions are operating in accordance with the laws of a state in which the Federal credit union maintains a facility. For the purposes of the paragraph, the word "facility" means the home office of a Federal credit union or any suboffice thereof, including but not necessarily limited to a wire service, telephonic station or mechanical teller station.

(d) Negotiable certificates of deposit purchased under this authority may be sold by a Federal credit union to a third party before maturity subject to the appropriate regulations governing the issuing institution involved.

(e) The purchase of a certificate of deposit that does not meet the above provisions is not authorized for Federal credit unions.

§703.2 Investment in loans to nonmember credit unions.

(a) A Federal credit union may invest in loans to other nonmember credit unions including loans extended under a line of credit agreement, provided:

(1) The aggregate amount of all loans and credit limits established to nonmember credit unions does not exceed 25 per centum of the investing Federal credit union's paid-in and unimpaired capital and surplus;

(2) The maximum amount of a line of credit shall be stated in the line of credit agreement between the investing and borrowing credit unions;

(3) The terms and maturities of outstanding loans and the schedule of payments of principal balances outstanding under a line of credit do not exceed one year; and

(4) The investment is approved by the board of directors, or its authorized executive or investment committee.

(b) Prior to making a loan or extending a line of credit, and annually in the case of an established line of credit, the investing Federal credit union shall obtain and retain on file the following documents from the borrowing credit union:

(1) A current financial and statistical report;

(2) A certified copy of the resolution of the board of directors or executive committee authorizing such borrowing; and

(3) A written statement from the secretary of the borrowing credit union that the persons negotiating the loan or line of credit and executing the note or agreement are officers of the credit union and are authorized to act on its behalf and that the amount of loan or line of credit does not exceed the maximum borrowing authority of the borrowing credit union.

§703.3 Investment Activities.

(a) *Definitions.*

(1) "Security" means any investment or deposit authorized for a Federal credit union pursuant to sections 107(7) and 107(8) of the Act. For the purpose of this section, the definition of

a security shall not mean loans to members or loans authorized under sections 701.21-6 and 701.21-8 of the rules and regulations.

(2) "Standby commitment" means an agreement to purchase or sell a security at a future date, whereby the buyer is required to accept delivery of the security at the option of the seller.

(3) "Cash forward agreement" means an agreement to purchase or sell a security, at a future date, that requires mandatory delivery and acceptance. The contract for the purchase or sale of a security for which delivery of the security is made in excess of thirty (30) days but not exceeding one hundred and twenty (120) days from the trade date shall be considered to be a cash forward agreement.

(4) "Repurchase transaction" means a transaction in which a Federal credit union agrees to purchase a security from a vendor and to resell a security to that vendor at a later date. A repurchase transaction may be of two types:

(i) "Investment-type repurchase transaction" means a repurchase transaction where:

(A) The Federal credit union purchasing the security takes physical possession of the security, or receives written confirmation of the purchase and a custodial or safekeeping receipt from a third party bank or other financial institution under a written bailment for hire contract identifying a specific security in its possession as owned by the Federal credit union;

(B) There is no restriction on the transfer of the security purchased by the Federal credit union; and

(C) The Federal credit union is not required to deliver the identical security to the vendor upon resale.

(ii) "Loan-type repurchase transaction" means any repurchase transaction that does not qualify as an investment-type repurchase transaction. A loan-type repurchase transaction represents a lending transaction and is subject to the limitations of section 107(5) of the Act.

(5) "Reverse repurchase transaction" means a transaction whereby a Federal credit union agrees to sell a security to a purchaser and to repurchase the same security from that purchaser at a future date, irrespective of the amount of consideration paid by the Federal credit union or the purchaser. A reverse repurchase transaction represents a borrowing transaction and is subject to the limitations of section 107(9) of the Act.

(6) "Futures contract" means a standardized contract for the future delivery of commodities, including certain government securities, sold on designated commodities exchanges.

(7) "Trade date" means the date a Federal credit union originally agreed, whether verbally or in writing, to enter into the purchase or sale of a security with a vendor.

(8) "Settlement date" means the date originally agreed to by a Federal credit union and a vendor for settlement of the purchase or sale of a security, without any modification or extension of that date.

(9) "Maturity date" means the date on which a security matures, and shall not mean the call date or the average life of the security.

(10) "Adjusted trading" means any method or transaction used to defer a loss whereby a Federal credit union sells a security to a vendor at a price above its current market price and simultaneously purchases or commits to purchase from that vendor another security above its current market price.

(11) "Bailment for hire contract" means a contract whereby a third party bank or other financial institution for a fee agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers.

(12) "Short sale" means the sale of a security not owned by the seller.

(13) "Market price" means the last established price at which a security is sold.

(b) *Limitations.*

(1) A Federal credit union may contract for the purchase or sale of a security authorized by section 107(7) of the Act, provided that the delivery of the security is to be made within thirty (30) days from the trade date.

(2) A Federal credit union may not enter into a standby commitment to purchase or sell a security.

(3) A Federal credit union may enter into a cash forward agreement to purchase a security provided that the period from the trade date to the settlement date does not exceed one hundred and twenty (120) days and the credit union has written cash flow projections evidencing its ability to purchase the underlying security. A Federal credit union may not enter into a cash forward agreement to sell a security unless it presently owns the security. All cash forward agreements must be settled on a cash basis at the settlement date.

(4) A Federal credit union may not enter into an investment-type repurchase transaction unless all the conditions cited in subsection 703.3(a)(4)(i) are met. Any repurchase transaction that does not meet such requirements constitutes a loan-type repurchase transaction subject to the limitations of section 703.3(b)(5). The purchase price of a security obtained under an investment-type repurchase transaction must be at the market price.

(5) A Federal credit union may enter into a loan-type repurchase transaction only with its own members, other credit unions, or approved credit union organizations that are defined in section 701.27-2 of the rules and regulations.

(6) A Federal credit union may enter into a reverse repurchase transaction, provided that the funds obtained are not invested under section 107(7)(I) of the Act. Furthermore, either any investment or deposit made under sections 107(7)(B), (D), (E), (F), (G), (H) or 107(8) of the Act or any security collateralizing the reverse repurchase transaction must have a maturity date not later than the settlement date for the reverse repurchase transaction. The maximum amount of funds that may be borrowed under a reverse repurchase transaction for investment or deposit is 10 percent of paid-in and unimpaired capital and surplus.

(7) A Federal credit union may not buy or sell a futures contract unless the purchase or sale is specifically authorized by a regulation issued by the Administration.

(8) A Federal credit union may not engage in adjusted trading as defined in section 703.3(a)(10).

(9) A Federal credit union may not engage in a short sale as defined in section 703.3(a)(12).

(10) All purchases and sales of securities by a Federal credit union by means of a cash transaction under section 703.3(b)(1) or a cash forward agreement under section 703.3(b)(3) must be at the market price.

APPENDIX I

Interpretative Ruling—Investment Activities

AGENCY: National Credit Union Administration

ACTION: Interpretation of General Applicability

SUMMARY: The purpose of this interpretative ruling is to set forth the Administration's position on certain activities resulting from 12 CFR 703.3 published on July 20, 1979, and to establish accounting procedures to be used in conjunction with the investment authorities permitted by that rule. The accounting procedures will be reflected in future changes to the Accounting Manual for Federal Credit Unions, NCUA 8022.

EFFECTIVE DATE: Upon publication.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456

FOR FURTHER INFORMATION CONTACT: Robert F. Schafer, Chief, Supervision Section, Office of Examination and Insurance, at the above address. Telephone (202) 357-1065.

SUPPLEMENTAL INFORMATION: On October 17, 1978, the Administration published a proposed rule (43 FR 47731) to restrict Federal credit unions from engaging in certain investment activities, which the Administration believed to be unauthorized, or unsafe and unsound in that they resulted in losses to Federal credit unions and/or in a risk to the National Credit Union Share Insurance Fund. The comment period on the rule ended on December 15, 1978, but was extended to March 15, 1979. The final rule was published July 20, 1979.

As a result of the final rule the Administration has established certain accounting procedures for those investment activities which are permissible. It is the Administration's opinion that the new procedures are necessary for Federal credit unions to provide for "full and fair disclosure" which is required by Section 702.3 of the rules and regulations (12 CFR 702.3).

Some of the accounting procedures were cited in the preamble to the proposed regulation while others are the result of comments which were received. The Administration has reviewed all comments on accounting procedures and made changes as discussed below.

1. Procedures for Investment Activities

(a) Background. The current Accounting Manual for Federal Credit Unions (accounting manual) does not address some of the accounting procedures necessary to implement the investment activities permitted under Section 703.3 of the National Credit Union Administration Rules and Regulations (the investment rule). Prior to the publication of the investment rule the Administration did recommend certain procedures for reverse repurchase transactions, which were distributed to all Federal credit unions in a letter from the Administrator. Additionally, the preamble to the proposed investment rule cited additional accounting procedures for investments. A copy of the proposed rule was also sent to all Federal credit unions for comment.

Numerous comments were received regarding the accounting procedures listed in the preamble to the proposed rule. Most of the comments objected to recognition of losses due to the mark to the lower of cost or market concept on forward placement contracts or to various aspects of fuller disclosure on the Statement of Financial Condition.

(A) Marking to the Lower of Cost or Market.

Most of the comments received objected to recording securities purchased via forward placement contracts (forwards) at the lower of cost or market on settlement date. Commentors claimed that it is unfair or inconsistent to do so for forwards when the same was not done for cash/immediate purchases. Others commented that this procedure does not comply with Generally Accepted Accounting Principles (GAAP). Some suggested that a footnote would suffice to provide full disclosure.

The Administration believes that there is a general misunderstanding of the basis for marking forwards to the lower of cost or market, as well as the basis for recording cash purchases at cost.

Federal credit unions have traditionally recorded investment purchases at cost. This price however, is also the market value of the security on the date of purchase. Under current accounting procedures Federal credit unions may choose to reflect declines in market value if the board determines that the securities purchased will not be held to maturity. Premiums and discounts are amortized or accreted, respectively, over the life of the security.

The accounting procedures for forward placement contracts are similar to cash purchases, except for the initial recording of the asset. The Administration believes that the requirement to record forwards at the lower of cost or market prevents the recording of an inflated asset on the books which could materially distort the financial statement. Thus the Administration believes its position complies with GAAP. Once the asset is recorded all other accounting procedures for investments prevail.

Marking forwards to the lower of cost or market on settlement date is not a new concept as the Comptroller of the Currency requires it for all national banks. Additionally, Federal credit unions may be interested to know that approved common trust funds are required to reflect market fluctuation of forward commitments not only at settlement date, but also during the period between trade date and settlement date. The reflection of market changes, ultimately affects the rate of return on these accounts.

Accordingly, the Administration believes that in order to provide for full and fair disclosure under Section 702.3 of the rules, it would be necessary for Federal credit unions to mark to the lower of cost or market on settlement date any security purchased via a cash forward agreement (which is the only forward placement contract permitted under the investment rule).

(B) Commitment Fees on Standby Commitments.

Several commentors stated that it is inconsistent to prohibit the recording of commitment fees received as income until settlement date, while requiring the recording of commitment fees paid as an expense on the date of payment. The discrepancy is now moot since Federal credit unions are prohibited from purchasing or selling securities via a standby commitment.

(C) Footnotes to the Financial Statements.

Several commentors objected to footnoting financial statements to reflect the current market value of outstanding commitments. Some pointed out that present accounting procedures do not require that Federal Credit Unions footnote their Statements of Financial Condition to reflect the current market value of the investment portfolio, and wondered why commitments should be footnoted. Others objected because they did not want to disclose large discrepancies between book and market value to their members "who would not understand."

The Administration has considered the former comment and determined that its policy on footnoting the impact of investment market conditions must be consistent for both recorded investments and commitments. The importance of this information in providing full and fair disclosure for recorded investments apparently had been overlooked in the past.

The Administration believes that the latter comment is contrary to the purpose of "full and fair disclosure." A Federal credit union has a responsibility to provide its members and creditors with sufficient and accurate information to make an informed decision on investing their funds.

Therefore Federal credit unions must footnote their Statements of Financial Condition to reflect the current market value of the investment portfolio as well as the value of outstanding commitments.

(D) Investment-type Repurchase Transactions

As noted in the preamble to the investment rule, the Administration reconsidered its position on the requirements necessary for delivering securities under an investment-type repurchase agreement. In light of this change, the Administration believes that some of the accounting procedures contained in the preamble to the proposed investment regulation are no longer applicable. These procedures re-

quired that interest and dividends on the securities purchased be recorded separately from a gain or loss on the sale of the securities. The Administration now believes that the purpose of repurchase agreements is to obtain a specified yield on the investment made and that this yield represents operating income. As such, it should be recorded in account no. 121, Income from Investments.

(E) Amortization/Accretion of Premiums/Discounts

The current Accounting Manual for Federal Credit Unions requires that premiums on investments be amortized over a period from the purchase date to maturity date, or in the case of call bonds to the call date. Discounts in all cases are accreted from purchase date to maturity date.

It was suggested that the Administration review that position in light of the increased use of pass-through securities backed by mortgage loans such as Government National Mortgage Association securities (Ginnie Maes) and Federal Home Loan Mortgage Corporation securities (Freddie Macs). These securities provide for principal repayments on a monthly basis that may be repaid prior to maturity. As a standard for comparing yield, mortgage-backed pass-through securities, such as Ginnie Maes and Freddie Macs which have 30-year maturities, are considered to have a 12-year average life. The average life is based upon data published by the Federal Housing Administration (FHA). Other pass-through securities, such as SBA guaranteed loans have no established average life.

In order to meet the needs of credit unions that have extensive pass-through security portfolios, the Administration has determined that it is necessary to provide alternative methods for amortizing or accreting premiums and discounts as set forth below in section (a)(8) of the Interpretative Ruling and Policy Statement.

2. Adjusted Trading.

As noted in the preamble to the final investment rule the Administration has documented a growing number of instances where Federal credit unions have attempted to hide or defer losses occurring from their investment transactions. The reasons for such actions have varied but generally can be attributed to the desire of officials to pay dividends when sufficient earnings would not be available had the investment losses been recognized. In some cases the officials may not have been aware of the impact of their actions, or that the adjusted trading was in violation of National Credit Union Administration Rules and Regulations. Thus, the Administration prohibited such activity in Section 703.3(b)(8) of the rules and regulations, and now spells out some of the types of transactions that constitute this activity in section (b) of the Interpretative Ruling and Policy Statement.

3. Other Investment Transactions.

The final rule prohibits certain investment activities, such as standby commitments, adjusted trading and short sales, and limits other activities such as cash forward agreements and reverse repurchase transactions. The Administration has determined that Federal credit unions have engaged in transactions which in whole or in part are prohibited by the rule. Therefore, the Administration believes it is necessary to clarify those transactions which it has determined are prohibited by section 703.3 of the rules. The fact that a particular transaction is not described in section (c) of this Interpretative Ruling does not mean that it would necessarily be permitted. Each transaction must be reviewed on its own merits in light of the investment rule. Should the Administration determine in the future that other transactions violate the rule, additional Interpretative Rulings will be issued.

INTERPRETATIVE RULING—IRPS NO. 79-4

(a) Accounting Procedures. The Administration believes that for the transactions listed below the following accounting procedures provide for full and fair disclosure as required by section 702.3 of the National Credit Union Administration Rules and Regulations.

(1) Cash Forward Agreement to Purchase Securities.

(A) Federal Credit Unions must be able to provide information on the type of security purchased by use of a cash forward agreement to include a complete description, trade date, settlement

date, amount, coupon rate, purchase price, and name of the seller. Such information should be kept in a current register for that purpose.

(B) Written cash flow projections evidencing the credit union's ability to purchase the underlying securities must be prepared prior to making a commitment to purchase the securities, as required by section 703.3(b)(3) of the investment rule.

(C) Prior to settlement the amount of the cash forward agreement represents a contingent liability to the credit union. Therefore, in accordance with the Accounting Principles and Standards for Federal Credit Unions it must be shown as a footnote or memorandum entry on the credit union's Statement of Financial condition for each month the commitment is outstanding. The footnote will reflect the agreed upon purchase price and the market price on the statement date.

(D) When purchased, the underlying security shall be recorded at the lower of cost or market. Losses, if any shall be shown in account no 420, Gain (Loss) on Investments.

(2) Cash Forward Agreement to Sell Securities.

(A) A Federal Credit Union must be able to provide information on the type of security sold by use of a cash forward agreement to include a complete description, trade date, settlement date, sale price and name of the purchaser. Such information should be kept in a current register for that purpose.

(B) Prior to settlement the amount of the cash forward agreement represents a contingent liability to deliver securities. Therefore, in accordance with the Accounting Principles and Standards for Federal Credit Unions it must be shown as a footnote or memorandum entry on the credit union's Statement of Financial Condition for each month the commitment is outstanding.

(C) The gain or loss on the sale of the underlying security will not be recognized until the settlement date and will be recorded in account no. 420, Gain (Loss) on Investments.

(3) Investment-Type Repurchase Transaction

(A) A Federal Credit Union must be able to provide information on the type of security purchased by use of an investment-type repurchase transaction to include an identification of the security (type, face value, coupon rate), trade date, settlement date, amount, repo rate, purchase price and the name of the seller. Such information should be kept in a current register for that purpose.

(B) Each investment-type repurchase transaction must be documented by the following as required by section 703.3(a)(4) of the investment rule.

(i) For those securities in the physical possession of the credit union, there must be clear evidence of ownership of the security.

(ii) For those securities held in safekeeping, there must be a copy of the "bailment for hire contract" from the third party bank or other financial institution, and a safekeeping receipt.

(C) The security purchased will be recorded at cost in the appropriate investment account (series 740).

(D) The credit union's Statement of Financial Condition will be footnoted to reflect the amount of securities which are subject to resale and the date of resale.

(E) Income earned on the securities purchased will be recorded in account no. 121 Income from investments.

(4) Loan-Type Repurchase Transaction

(A) Loan-type repurchase agreements to members must be made in accordance with and within the limitations established in the Federal Credit Union Act, the Federal Credit Union Bylaws, the National Credit Union Administration Rules and Regulations, and policies established by the board of directors. These requirements include but are not limited to a maximum loan limit of 10 percentum of unimpaired capital and surplus to one member, the receipt of a properly supported loan application, approval of the loan by the credit committee, and execution of a note supported by

documentation of the collateral. Account no. 705, Loans Subject to Repurchase Agreements, will be used to record these loans.

(B) Loan-type repurchase agreements to other credit unions must conform with limitations contained in sections 107(5)(C) and 107(7)(C) of the Act and Section 703.2 of the National Credit Union Administration Rules and Regulations. These loans will be recorded in account 747, Loans to Other Credit Unions.

(C) Loan-type repurchase agreements to approved credit union organizations must be in compliance with section 107(5)(D) of the Act and National Credit Union Administration Rules and Regulations. Account no. 744, Loans to Credit Union Service Corporations, will be used to record these loans.

(D) Where material in amount the securities used as collateral for the loan-type repurchase agreement will be identified in a footnote or memorandum entry on the credit union's Statement of Financial Condition for each month the repurchase agreement is outstanding. The footnote will reflect the market price of the securities on the statement date.

(E) Income received from loans to members will be recorded in account no. 111, Interest on Loans. Income received from loans to credit union organizations and loans to other credit unions will be recorded in account no. 121, Income from Investments.

(5) Reverse Repurchase Transaction.

(A) Since Reverse repos represent a borrowing activity, such activity must be approved by the board of directors or a duly appointed executive committee as required by section 113 of the Federal Credit Union Act.

(B) Funds received from reverse repos will be recorded as borrowed funds in account no. 812, Notes Payable—Other.

(C) The securities used as collateral for the reverse repos will be identified in a footnote or memorandum entry on the credit union's Statement of Financial Condition for each month the reverse repo is outstanding. The footnote will reflect both the book value and the market price on the statement date.

(D) Interest paid on reverse repos will be recorded in account no. 340, Interest on Borrowed Money.

(6) Commitment Fees. Section 703.3(b)(2) of the investment rule prohibits Federal credit unions from entering into standby commitments to purchase or sell securities. Those credit unions, that prior to the publication of the final rule entered into standby commitments to purchase or sell securities, need not adjust their records to reflect the accounting procedure for commitment fees which was noted in the preamble to the proposed rule.

(7) Footnotes to Financial Statements. In order to provide for full and fair disclosure as required by section 702.3 of the National Credit Union Administration Rules and Regulations, Federal credit unions must footnote their Statements of Financial Condition to reflect the market value of the securities recorded in accounting series 740.

(8) Amortization/Accretion of Premiums/Discounts on Pass-through Securities. Federal credit unions may select from the following methods for amortizing and accreting premiums and discounts on pass-through securities, provided the method selected is used for all such securities.

(A) For pass-through securities backed by mortgage loans:

(i) Maturity method. The maturity method calls for amortization or accretion of premiums or discounts from date of purchase to date of maturity.

(ii) Average life method. This method provides for amortization or accretion from the purchase date to 12 years from the date the security was originally issued.

(iii) Repayment factor method. This method provides for amortization or accretion based upon the percentage of the principal repaid to the par value of the security on the purchase date.

(B) For pass-through securities not backed by mortgage loans:

(i) Maturity method

(ii) Repayment factor method

(9) Examples. Examples of the accounting entries for the transactions discussed above are found in Appendices A through F.

(b) Adjusted Trading. The Administration believes that the following types of transactions constitute adjusted trading (as defined in section 703.3(a)(10)), and therefore, are prohibited. The most common form of adjusted trading occurs when a credit union cannot meet its commitment to purchase a security on the settlement date and the market price is below the commitment price. Thus, if the credit union is forced to immediately sell the security it will incur a loss. In order to prevent the loss, the credit union would enter into an agreement to resell the security to the broker at the commitment price and to enter into another commitment to purchase a different security at a price that exceeds its market value. Thus the credit union has deferred its loss in hopes that the market price of the security underlying the new commitment will increase by the new settlement date.

A less common form of adjusted trading occurs when a credit union swaps or exchanges a lower yielding security for a higher yielding security. In this case, the sale of the low yielding security would result in a loss which the credit union does not wish to recognize during the current accounting period. Again the credit union agrees to sell its security and buy the new security at prices above market. Another name for these transactions is overtrading.

A variation of the adjusted trade involving a forward commitment is known as "fee trading" or "reposition trading." This transaction is the same as the first example above except that the broker is unwilling to take the risk of purchasing the initial security the credit union would sell at a price above market. Therefore, the broker requires that the credit union pay a fee, which is the difference between the commitment price and the market price when they enter into the transactions. When the credit union purchases the new security, the broker returns the fee. Often, this type of transaction occurs repeatedly. The fee is usually recorded by the credit union as a receivable, deferred expense, or other asset.

The Administration believes that the transactions described above, under whatever name, constitute adjusted trading and thus are prohibited under section 703.3(b)(8) of the final investment regulation.

(c) Other Investment Transactions. The Administration believes that the following transactions are in whole or in part in violation of section 703.3 of the National Credit Union Administration Rules and Regulations and thus are prohibited.

(1) Yield maintenance contract

(A) Definition. A yield maintenance contract, also known as a pair-off hedge, is the concurrent commitment to purchase a security via a cash forward agreement and to sell the same security on the same settlement date via a standby commitment. The credit union is required to pay a commitment fee to the vendor which is generally exorbitant. The purpose of the transaction is to "guarantee" a specified yield that is based upon the commitment fee paid. Generally, the purchase and sale prices are not related to the current market price.

(B) Basis for Prohibition. Yield maintenance contracts violate section 703.3(b)(2) which prohibits a Federal credit union from entering into a standby commitment and section 703.3(b)(10) which requires that all purchases and sales of securities be done at market prices. Additionally, the Administration believes that a yield maintenance contract is an unsecured loan to a broker (a nonmember) and thus is in violation of section 107(5) of the Federal Credit Union Act.

(2) Pair-Off Transaction.

(A) Definition. A pair-off transaction is the matching or netting of commitments to purchase and sell securities via cash forward agreements. Generally a Federal credit union would commit to purchase a security and sometime thereafter commit to sell the security on the same settlement

date. The purpose in engaging in pair-off transactions is not to take delivery of the security purchased, but to speculate that the market price will increase before settlement date and a gain will result from its sale. Many times the commitment to sell is made the same day as the commitment to purchase. There may even be a standard order with the vendor to sell when a certain market price is reached.

(B) Basis for Prohibition. Pair-off transactions are prohibited by section 703.3(b)(3) which prohibits Federal credit unions from selling securities via a cash forward agreement that they do not own. The Administration also believes that pair-off transactions represent a speculative activity that is unsafe and unsound. Additionally, there is strong evidence to show that it has been used as a means of "churning" credit union accounts to benefit brokers commissions.

It should be noted that a short sale, which is a pair-off transaction in reverse, is prohibited under section 703.3(b)(9).

(3) Dollar Price Repurchase Agreement (dollar price repo).

(A) Definition. A dollar price repurchase agreement means a contract whereby a Federal credit union sells a security that it owns and agrees to purchase another security on a future date. Because of the reasons set forth below, the Administration has determined that the dollar price repo does not represent borrowing by a Federal credit union as does a reverse repurchase transaction defined in section 703.3(a)(5) of the investment regulation.

In the case of a reverse repurchase agreement, the transaction represents borrowing because ownership of the security "sold" does not change; that is, the "seller" of the security still has title and still receives the dividend or interest income from the security. Interest based upon the balance of the proceeds received from the transaction are paid by the "seller." Additionally, the same security "sold" must be "repurchased." As such, the essential elements of a sale and repurchase do not exist.

In the case of a dollar price repo, the essential elements of a sale do exist, i.e., ownership of the security does change. The buyer now receives the dividend or interest income on the security. No interest is paid by the seller for funds received. The same security sold is not required to be repurchased.

The Administration believes that some Federal credit unions have been encouraged to adopt accounting practices that make a dollar price repo appear to be a reverse repurchase transaction. Such practices include:

(i) Not recording gains and losses when the security is sold.

(ii) Prorating the difference between the price of the security sold and the price of the security purchased over the transaction period and recording this difference as interest income or expense.

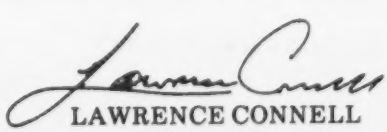
(iii) Accruing or accreting premiums or discounts on the security that is sold.

(iv) Not recording the purchase of the new security.

(B) Policy. The Administration believes that a dollar price repo represents the sale of a security and a simultaneous agreement to purchase another security at a future date by use of a forward placement contract. As such a Federal credit union may enter into such an agreement only if:

(i) Gains and losses on the sale of the security sold are recognized on the settlement date of the sale.

(ii) The limitations cited in section 703.3(b)(3) for purchasing a security under a cash forward agreement are met.



LAWRENCE CONNELL
Chairman

APPENDIX A

ACCOUNTING ENTRIES FOR A CASH FORWARD AGREEMENT TO PURCHASE A SECURITY

Assume that an FCU entered into a Cash Forward Agreement to purchase a $1 million par value Federal Agency security on March 16 at 95, which is the market price for a 90 day forward. The FCU had written projections which showed that it had a $1 million CD maturing on June 15, the settlement date of the forward. The market value of the security was 93 on June 14.

Entries:

March 16

The commitment is recorded in the cash forward agreement register.

Future financial statements of the Federal credit union are footnoted.

June 15

Dr. Federal Agency Securities (742)	930,000	
Dr. Gain (Loss) on Investments (420)	20,000	
Cr. Cash (731)		950,000

To record purchase of security at lower of cost or market.

Footnote is removed from the financial statements.

APPENDIX B

ACCOUNTING ENTRIES FOR A CASH FORWARD AGREEMENT TO SELL A SECURITY

Assume that a FCU owns a Federal Agency Security recorded on its books for $950,000. It commits on June 10 to sell the security on August 20 for $975,000.

Entries:

June 10

The commitment is recorded in the cash forward agreement register.

Future financial statements are footnoted.

August 20

Dr. Cash (731)	$975,000	
Cr. Federal Agency Securities (742)		950,000
Cr. Gain (Loss) on Investments (420)		25,000

To record the sale of the security and recognize the gain on the sale.

Footnote is removed from the financial statements.

APPENDIX C

ACCOUNTING ENTRIES FOR AN INVESTMENT-TYPE REPURCHASE TRANSACTION

Assume that an FCU entered into an investment-type repurchase transaction on September 30 to purchase a mortgage-backed Federal Agency security with a face value of $2,142,857 and a coupon rate of 8.50. The parties agreed upon a repo rate of 9.0. The purchase price was 98. Also assume that the FCU agreed to resell a similar type security to the vendor on October 1 at 98.0245.

Entries:

September 30

The funds are transferred to the broker through the credit union's custodial bank, which transmits a custodial slip to the FCU. The transaction is recorded in the repurchase transaction register.

The financial statements of the Federal credit union are footnoted.

Dr. Federal Agency Securities (742)		
($2,142,857 x 98)	2,100,000	
Cr. Cash (731)		2,100,000

To record the purchase of the security.

October 1

Dr. Cash (731)	2,100,525	
Cr. Federal Agency Securities (742)		2,100,000
Cr. Income from Investments (121)		525

To record repurchase of security and receipt of income.

Footnote is removed from financial statements.

APPENDIX D

ACCOUNTING ENTRIES FOR A LOAN-TYPE REPURCHASE AGREEMENT

Assume FCU "A" enters into a Repurchase Agreement with FCU "B" whereby "A" lends $1 million to "B" on February 1 and receives as collateral a $1 million Federal Agency security valued at par. FCU "B" agrees to repay the loan on August 1. The interest rate is 6 percent.

Entries on the books of FCU "A"

February 1

Dr. Loans to Other Credit Unions (747)	1,000,000	
Cr. Cash (731)		1,000,000

To record loan.

The records of the Federal credit union are footnoted.

August 1

Dr. Cash (731)	1,030,000	
Cr. Loans to Other Credit Unions (747)		1,000,000
Cr. Income from Investment (121)		30,000

To record repayment of loan with interest.

Footnote is removed from records.

Entries for FCU "B" are contained in Appendix E.

APPENDIX E

ACCOUNTING ENTRIES FOR A PERMISSIBLE REVERSE REPURCHASE TRANSACTION

Referring to Appendix D, FCU "B" would record the transaction as a Reverse Repurchase Agreement. In addition to the information given in that example, assume also that FCU "B" is unable to repay the loan from available funds on settlement date. FCU "B" chooses to sell the underlying security at its fair market value of 99½. The security is booked at par.

Entries on the books of FCU "B"

February 1

Dr. Cash (731)	1,000,000	
Cr. Notes Payable—Other (812)		1,000,000

To record the Reverse Repo as borrowed funds.

The records of the Federal credit union are footnoted.

August 1

Dr. Cash (731)	995,000	
Dr. Gain (Loss) on Investments (420)	5,000	
Cr. Federal Agency Securities (742)		1,000,000

To record sale of the underlying security recognizing a $5,000 loss.

Dr. Notes Payable (812)	1,000,000	
Dr. Interest on Borrowed Money (340)	30,000	
Cr. Cash (731)		1,030,000

To record payment of notes payable and interest due.

Footnote is removed from records.

APPENDIX F

REPAYMENT FACTOR METHOD OF AMORTIZING/ACCRETING PREMIUMS AND DISCOUNTS FOR MODIFIED PASS THROUGH SECURITIES

Assume that an FCU purchases a modified pass through security with a par value $932,577 on March 1 at 92 8/32. Principal repayments in March, April and May were $500, $625, and $750. Accretion of the discount would be as follows:

1. Determine the amount of the discount

Par value on date of purchase	$932,577
less purchase price (par x 92 8/32)	860,302
Discount	$ 72,275

2. Determine the repayment factor

$$\frac{\text{Premium or discount}}{\text{Par value}} = \text{Repayment factor}$$

$$\frac{\$72,275}{932,577} = .0775$$

3. Determine the amortization/accretion

	Principal repayment		Repayment factor		Amortization/ Accretion
April	$500	x	.0775	=	$38.75
May	625	x	.0775	=	48.44
June	750	x	.0775	=	58.13

Part 704

Corporate Central Federal Credit Unions

§704.0 Scope.

(a) This Part contains those regulations governing the operations of and requirements for corporate central Federal Credit Unions where such operations and requirements differ from those of natural person Federal credit unions.

(b) Part 702 of this Chapter sets forth the reserving requirements for Federal credit unions. As concerns corporate central Federal credit unions, this Part modifies the existing regular reserve structure by eliminating from outstanding loans and risk assets, when computing the amount that must be maintained in the regular reserve, loans to member credit unions (loans to other credit unions are presently excepted from risk assets by Section 700.1(j)(4)), and by creating a corporate central reserve.

(c) The regulation sets out procedures for representation on the board of directors and credit committee of corporate central Federal credit unions and for the establishment of written management policies. In addition, annual audit requirements are described and a daily balance share account for member credit unions is established that is not subject to the rate restrictions specified in Section 701.35(g).

§704.1 Definitions.

(a) "Corporate central Federal credit union" means a Federal credit union operated for the primary purpose of serving corporate accounts. A Federal credit union will be deemed to be a corporate central Federal credit union when its total dollar amount of outstanding corporate loans plus corporate shareholdings is equal to, or in excess of, 75 per centum of its total outstanding loans plus shareholdings.

(b) "Natural person Federal credit union" means any Federal credit union that is not a corporate central Federal credit union.

(c) "Risk assets" of a corporate central Federal credit union shall be as defined in Section 700.1 of this Chapter, except, however, loans made under authority of Sections 107(5) and 107(7) of the Federal Credit Union Act by a corporate central Federal credit union to credit unions shall not be considered risk assets.

(d) "Management policies" means policies relating to the general conduct of a credit union's operations including but not limited to policies related to membership, lending, investment, borrowing, safeguarding of assets, hiring, training, and supervision of employees.

§704.2 Corporate Central Reserve.

(a) In addition to the Regular Reserve required by Section 702.2 of this Chapter, a corporate central Federal credit union shall establish and maintain a Corporate Central Reserve as described in this Section.

(b) Immediately before the payment of each dividend, the treasurer shall determine the gross income of the corporate central Federal credit union. From this amount there shall be transferred to a reserve to be known as the Corporate Central Reserve, as of the end of each dividend period, 2 per centum of gross income until the Corporate Central Reserve shall equal 1½ per centum of the corporate central Federal credit union's total assets.

(c) Whenever the Corporate Central Reserve falls below 1½ per centum of total assets it shall be replenished by regular transfers of 2 per centum of gross income or by contributions in such amounts as may be needed to maintain the Corporate Central Reserve at 1½ per centum of total assets, whichever is less.

(d) Charges may be made against the Corporate Central Reserve to the same extent and in the same manner as those permitted to be made against the Regular Reserve pursuant to Section 702.2 of this Chapter. No other charges shall be made against the Corporate Central Reserve except as may be authorized in writing by the Board or its designee.

§704.3 Management.

(a) A member credit union of a corporate central Federal credit union may appoint a representative to the corporate central Federal credit union. This representative shall be empowered to attend meetings, vote, and stand for election on behalf of the member credit union. The business affairs of the corporate central Federal credit union shall be managed by:

(1) A board of not less than five directors elected by and from the members and appointed representatives of member credit unions;

(2) A credit committee of not less than three members elected by and from the members and appointed representatives of member credit unions; and,

(3) A supervisory committee of not less than three members nor more than five members, one of whom may be a director other than the treasurer, to be appointed by the board. Designated representatives of member credit unions may be appointed to the supervisory committee.

(b) At their first meeting after their election, the directors shall elect from their number, a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the corporation.

(c) Management Policies

(1) The board of directors shall adopt and approve written policies that shall be reviewed at least annually.

(2) In establishing the management policies, the board shall adopt policies that will foster efficient operations in conformance with sound business practice both in the corporate central Federal credit union and among its members.

(d) The board of directors shall institute a budgetary process that addresses the areas of income and expenses, cash flow, and the sources and uses of funds and shall assess actual performance against such budgets at least quarterly.

§704.4 Annual Audit.

(a) The supervisory committee shall cause an annual audit to be made by an independent, duly licensed, auditor and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting.

(b) A copy of the audit report shall be submitted to the appropriate regional office of the National Credit Union Administration within 30 days after receipt by the board of directors.

§704.5 Daily Balance Share Account.

Notwithstanding the requirements of Section 701.35 of this Chapter, a corporate central Federal credit union may make available to its member credit unions a daily balance share account subject to the following terms and conditions:

(a) The dividend period for such accounts shall be daily.

(b) The board of directors, after determining through projections that adequate earnings are available, may declare dividends no more frequently than daily and no less frequently than monthly.

(c) The dividend rate on such accounts shall not be subject to the rate restrictions of Section 701.35(g) of this Chapter.

(d) The board of directors may establish additional terms and conditions concerning the issuance and maintenance of such accounts in conformance with the requirements of this Section and Section 701.35.

Part 705

Community Development Credit Union Program

§705.1 Purpose and Scope.

(a) The purpose of this Part is to establish the Community Development Credit Union (CDCU) program under joint administration of the National Credit Union Administration (NCUA) and the Community Services Administration (CSA).

(b) This Part establishes the following:

(1) The application process for participation in the program;

(2) Prerequisites for program participation;

(3) Selection criteria for participation in the program; and

(4) Criteria for the receipt of seed capital and the time frame for return of such funds to the revolving fund.

§705.2 Definition.

For the purpose of this Part, a Community Development Credit Union (CDCU) is a credit union chartered in accordance with this Part, or an existing qualified credit union which has submitted an application and has been selected for participation in the CDCU program in accordance with this regulation.

§705.3 Purpose of Program.

The CDCU program is to demonstrate that community base financial cooperatives, credit unions, with technical assistance and limited financial assistance in the form of seed capitalization, can play a significant role in providing needed financial and labor intensive services to their respective communities.

§705.4 Program Participation.

The CDCU program is available to organizations proposing to form a credit union and to those existing credit unions which meet the criteria established in this Part, submit an application in accordance with this Part, and are selected by NCUA and CSA for participation in the program.

§705.5 Community Services.

(a) In accordance with the CDCU program objectives, a credit union selected for participation in this program will be expected to provide services determined to be needed within the credit union's community.

(b) The following is a partial listing of typical services which may be recognized and provided by a CDCU.

(1) Member financial counseling — budget preparation; money management (Both preventative and remedial);

(2) Member/consumer education programs;

(3) Home owner counseling — resident purchasing, renting and leasing, mortgage information;

(4) Food stamp distribution;

(5) Check cashing — money orders;

(6) Bill paying services — utility and other reoccurring obligations;

(7) Direct deposit of social security checks;

(8) Stimulation and development of cooperative activities, i.e. buying club craft cooperatives, recycling projects and energy cost saving projects.

§705.6 Application for Chartering/ Participation.

(a) Application to participate in the Community Development Credit Union Program shall be submitted to:

National Credit Union Administration
Office of Examination and Insurance
Division of Community Development
1776 G Street, N.W.
Washington, D.C. 20456

(b) In addition to the prerequisites set forth below, the applying organizations and credit unions must demonstrate a sound financial position, ability to manage the day-to-day business affairs of a credit union, and a commitment to achieve the program objectives. The application shall contain the following information:

(1) The geographical area constituting the community to be served, and what agency has designated the area (exact boundaries) as a "target area", "special impact area", "comprehensive action area", "neighborhood strategy area", "total service area" or other terminology.

(2) The community programs which have been successfully carried out by the organization applying for the charter and serving as the core unit or catalyst for the CDCU. (This organization may be an existing community credit union applying for conversion to a CDCU or a community organization applying for a new CDCU charter.)

(3) How the CDCU proposes to serve the needs of the community.

(4) How the CDCU proposes to cooperate with existing community development programs of such agencies as the Community Services Administration, the Economic Development Administration, Department of Housing and Urban Development, the Small Business Administration, the Minority Business Development Agency, and other agencies.

(5) Financial statements sufficient to determine financial condition of the credit union or the sponsor organization. Credit unions applying to participate in the program should submit the following for the most recent month-end and the twelve months preceding that month-end:

(i) Balance sheet;
(ii) Income and expense statement; and
(iii) Delinquent loan list

(6) Organizations proposing to form and sponsor a CDCU should submit information relative to the make-up of that organization. Suitable information would include type of organization (corporation, association, for profit, not for profit), purpose of the organization, community projects completed or engaged in, and time in operation. The organization should also indicate the type and amount of assistance it is committed to provide the proposed CDCU.

(7) Applicants should provide demographic data demonstrating that a major segment of the community to be serviced by the CDCU meets CSA Income Poverty Guidelines. The Guidelines may be obtained from any CSA regional office.

(c) NCUA will notify those organizations who, based on the information submitted in accordance with this regulation appear to qualify and are selected for participation in the CDCU program. Applicants not selected will be notified by NCUA.

§705.7 CDCU Field of Membership.

(a) The CDCU will serve the total community. Therefore, the CDCU's field of membership will correspond geographically to the designated program area and may include employees who regularly work in the described area, and businesses located within the area as well as the residents of the area.

(b) A number of contiguous neighborhoods may be covered in one Federal program target area and accordingly, the entire target area would be served by the CDCU. However, separated target areas may not be included in the field of membership of one CDCU.

(c) A typical CDCU field of membership may read as follows:

Persons who reside or work in that part of Small Town, Any State, designated (by the Economic Development Administration) as the "Special Impact Area" (SIA) bounded on the north by Baker Avenue, on the east

by Interstate 85, on the south by First Street, and on the west by Grand Road; unremarried spouses of persons who died while within the field of membership of this credit union; members of their immediate families; organizations of such persons;

Individual proprietorships, partnerships, or corporations located within the above SIA and actively engaged in a legal business practice within the community; and

Incorporated or unincorporated associations located in the above SIA.

(d) A qualified Federal credit union may elect to participate in the CDCU program upon a majority vote of its board of directors and upon approval of its application for participation. Any credit union field of membership change to conform with a program area, as previously described, must be approved by the credit union's board of directors and the appropriate regulatory agency in accordance with established procedures.

§705.8 Community Development Committee.

(a) The organizational structure of the CDCU will be the same as for all other credit unions except that each CDCU shall have, in addition, a Community Development Committee. The responsibilities of the Community Development Committee fall into two interrelated categories: coordination (liaison) and identification of community needs.

(1) *Coordination*

The Community Development Committee must establish and maintain liaison with all government agencies and others having developmental projects in the community. The committee will maintain periodic contact with representatives of the Economic Development Administration, the Community Services Administration, the Department of Housing and Urban Development, State, county and municipal government representatives. This liaison will ensure a united effort at redeveloping the community with a minimum of duplication.

(2) *Community Needs Plan*

(i) Within 90 days after a credit union has been selected for participation in the CDCU program, or after chartering, as in the case of a credit union chartered in accordance with this regulation, the Community Development Committee will prepare and present to the CDCU's board of directors, a CDCU Community Needs Plan. This plan will set forth the coordination contacts established and the details of these initiatives. The plan will also contain, in priority sequence, a list of community needs which the credit union may or may not be able to fulfill. The committee need not attempt to limit these needs to what is currently "affordable", nor should it include "nice-to-have" extravagances which are not serious needs of the total community. The credit union's board of directors will make the decisions on what services can be provided and when. The committee's responsibility is to advise the board on needs and to provide sufficient cost estimates and "how to" recommendations to enable the board to reach the best decisions.

(ii) After the initial action plan is prepared and reviewed by the board of directors, the board will identify each service item as adopted, deferred, or rejected and establish time frames and procedures for implementing those items adopted. The committee is responsible for monitoring progress toward implementation, recommending changes in programs and recommending changes in program priorities. The Community Development Committee will report to the board of directors and the supervisory committee at least quarterly. Each report will include a statement of the progress made and any changes and recommendations deemed appropriate. The Community Development Committee will keep all involved government and private sector program coordinators informed of activities that the credit union has approved and is working toward implementing.

(b) The Community Development Committee shall be appointed by the board from among the members of the credit union, one of whom may be a director or member of the credit committee. The board shall determine the number of members on the committee which shall not be fewer than three nor more than five. Regular terms of the committee members shall be for 1 or 2 years as the board shall determine. Provided, however, that all terms shall be for the same number of years and until the appointment and qualification of successors. The regular terms

shall expire at the first regular meeting of the board following each annual meeting.

(c) No member of the Community Development Committee may be compensated as such. The board of directors, however, may authorize paid credit union staff personnel to assist the committee in performing clerical functions and/or may authorize the committee to hire necessary clerical assistance.

(d) The Community Development Committee will report to the members at the annual meeting of members.

(e) Within 90 days after chartering or converting to a CDCU, the Community Development Committee will notify the CDCU's community of the chartering or conversion to a CDCU. Included in the notice will be the mission of the CDCU and the responsibilities of the Community Development Committee, the names of its members and its coordination and community needs function as described in this Part.

§705.9 Business Plan.

(a) Once selected, the CDCU will construct a plan for growth and development of the credit union. The plan will set forth financial growth, credit union development, capitalizations and the means for achieving these objectives. Technical assistance in the development of the business development plan may be available to those credit unions that, in CSA's discretion, are deemed deserving such assistance.

(b) The CDCU's development will be carefully monitored and evaluated by NCUA. Although seed capital funding may be possible, CDCUs will be encouraged to develop, as rapidly as possible, a permanent capital source of member shares.

§705.10 Capitalization.

(a) Credit unions selected for participation in this program will be eligible to receive up to $200,000 in seed capital. The amount of capitalization will be based on financial need and a demonstrated capability to provide community services. The capitalization is not a grant and shall be repayable in five (5) years in six month intervals as follows:

End of 6 months	Interest only
End of 12 months and at each 6 month	Interest due plus 10% of original principal (capitalization) interval for the succeeding 42 months
End of 60th month (last payment)	Interest due plus remaining principal amount

(b) The interest rate shall be 2% APR computed on the unpaid balance; except that the interest may be waived by the Director, CSA based on appropriate supported justification.

(c) A provision shall be inserted in the capitalization agreement requiring the immediate repayment of the balance of the funds for improper use, or if uninvested cash remains unused for an unreasonable or unjustified period of time.

§705.11 State Chartered Credit Unions.

State chartered credit union applicants approved for participation by NCUA and CSA must obtain written concurrence from their respective state regulatory authority.

§705.12 Application Period.

Application for participation in programs will be accepted through June 6, 1980. Applications received during this period will be reviewed and qualified applicants will be selected. In the event an insufficient number of applicants qualify for participation, NCUA will reopen the program for receipt of applications.

Part 706

Conversion from Federal to State Credit Unions

§706.0 Scope.

This part prescribes the procedures that enable a Federal credit union to convert to a state credit union.

§706.1 When Permissible.

Any Federal credit union may convert to a state credit union by:

(1) complying with the requirements of the Federal Credit Union Act and the requirements enumerated in this and in other parts of these regulations; and

(2) complying with applicable state laws and requirements of the state supervisory authority.

§706.2 Special Provisions for National Credit Union Share Insurance.

(a) Should the converting Federal credit union desire to continue Federal Share Insurance subsequent to conversion, an application shall be submitted to the Board at the time the Federal credit union requests its approval of the conversion proposal.

(b) Should the converting Federal credit union not desire to continue Federal Share Insurance subsequent to conversion, or should the share insurance application for continued insurance as a state credit union not be approved by the Board, such insurance ceases as of the effective date of the conversion. As used herein, the effective date of conversion is the day immediately preceding the date on which the Federal credit union became a state credit union.

(c) When the converting Federal credit union's insurance is terminated in accordance with subsection (b) of this section, it is not entitled to a rebate of premiums, but a refund of the unused portion of the premiums shall be authorized.

§706.3 Submittal of Conversion Proposal to Administration.

(a) Upon approval of a proposition for conversion by the board of directors, the conversion proposal shall be submitted to the Regional Director. This proposal shall include:

(1) a current financial report;

(2) current delinquent loan schedule annotated to reflect collection problems;

(3) explanation and appropriate documents relative to any changes in insurance of member accounts;

(4) resolution of the Board of Directors;

(5) notice of Special Meeting of the members;

(6) copy of Ballot to be sent to members; and

(7) evidence that the state supervisory authority is in agreement with the conversion proposal.

(b) The Regional Director will review the proposal and forward it, with his recommendations, to the Board.

§706.4 Approval of Proposal by Board.

If the Board finds that the conversion proposal complies with this and other parts of these regulations, it will approve the proposal.

§706.5 Approval of Proposal by Members.

(a) The converting Federal credit union must:

(1) obtain approval of the conversion proposal by a majority of the members of record:

(2) submit the conversion proposal to the members either at the annual meeting, if within 120 days after the Board's approval, or at a special meeting to be called within 120 days of such approval; and

(3) give advance notice of the meeting at which the proposal is to be submitted in accordance with the provisions of Article V of the Federal Credit Union Bylaws. The notice shall:

(i) specify the time, place and purpose of the meeting;

(ii) include a brief and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon shareholdings, insurance of member accounts, and the policies and practices of the credit union;

(iii) inform the members that they have the right to vote on the proposal at the meeting, or by mail ballot postmarked no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

(iv) be accompanied by a Ballot for Conversion Proposal.

(b) The board of directors shall, within 10 days, certify the results of the membership vote to the Regional Director.

§706.6 Compliance With State Laws.

If the proposal for conversion is approved by the members, the board of directors shall promptly take necessary action, under applicable state law, to convert to a state credit union. Further, the board of directors will keep the Regional Director advised as to the status of this action.

§706.7 Completion of Conversion.

(a) The board of directors shall, within 10 days after receipt, submit to the Regional Director a copy of the state charter, license, or other documentary evidence that the credit union has been authorized to operate as a state financial institution. This shall be accompanied by the Federal charter and the Federal insurance certificate.

(b) The credit union shall cease to be a Federal credit union as of the effective date of the conversion.

(c) If the Board is satisfied that the conversion has been accomplished in accordance with the approved proposal it will cancel the Federal charter.

(d) If the state credit union is to be federally-insured, the Board will issue a new insurance certificate.

Part 707

Conversion from State to Federal Credit Unions

§707.0 Scope.

This part prescribes the procedures that enable a state credit union to convert to a Federal credit union.

§707.1 When Permissible.

Any state credit union may convert to a Federal credit union by:

(1) complying with the requirements of the Federal Credit Union Act and the requirements enumerated in this and in other parts of these regulations; and

(2) complying with applicable state laws and the requirements of the state supervisory authority.

§707.2 Submittal of Conversion Proposal to Administration.

(a) Upon approval of a proposition for conversion by the board of directors, the conversion proposal shall be submitted to the Regional Director. This proposal shall include:

(1) evidence that the state supervisory authority is either in agreement with the conversion proposal, or, if in disagreement, the reasons therefor;

(2) application to convert from a state to a Federal credit union;

(3) in the case of a state credit union which is not federally insured, an application for Federal insurance; and

(4) authorization for the Board to make an examination of the credit union and an agreement to pay an examination fee in accordance with §701.7.

(b) The Regional Director will review the proposal and forward it, with his recommendations, to the Board.

§707.3 Approval of Proposal by Board.

If the Board finds that the conversion proposal complies with this and other parts of these regulations, it will approve the proposal.

§707.4 Compliance with State Requirements.

(a) Upon the Board's approval of the conversion proposal, the credit union shall proceed to comply with the requirements of the state, requisite to enabling it to convert to a Federal credit union.

(b) The board of directors shall immediately notify the Regional Director, in writing, when all state requirements have been met. This notification shall be accompanied by documentary evidence from the state authority that the requirements have been satisfied.

§707.5 Application for Federal Charter.

Upon receipt of the notification described in §707.4(b), the Regional Director will authorize the credit union to proceed for a Federal charter in accordance with Part 701 of these regulations. Upon receipt by the Regional Director, the proposed Organization Certificate will constitute the credit union's formal application to become a Federal credit union.

§707.6 Completion of Conversion.

(a) If the Board is satisfied that the conversion has been accomplished in accordance with the approved proposal, it will approve the Organization Certificate and Application and Agreements for Insurance. The credit union's

Federal Charter and Certificate of Insurance will be forwarded by the Board.

(b) The effective date of the conversion will be the date on which the Board approves the Organization Certificate. It shall be vested with all of the assets and shall continue to be responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

(c) Upon receipt of its Federal Charter, the board of directors shall hold its first meeting as a Federal credit union. At such meeting the board of directors shall transact such other business as is necessary to carry into effect the conversion as approved by the Board and to operate the Federal credit union in accordance with the requirements of the Act.

Part 708

Mergers of Credit Unions

§708.0 Scope.

This part prescribes the procedures that enable one or more credit unions to merge with a single continuing credit union where at least one of the merging credit unions or the continuing credit union is a Federal credit union or a federally-insured state credit union.

§708.1 Definitions.

(a) As used herein:

(1) The continuing credit union is that credit union which will continue in operation after the merger.

(2) The merging credit union is that credit union which will cease to exist as an operating credit union at the time of the merger.

(3) State credit union means any credit union organized and operated according to the laws of any state, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, or any credit union organized and operating under the jurisdiction of the Department of Defense and in compliance with the requirements of Title I of the Federal Credit Union Act and regulations issued thereunder. Accordingly, state means the appropriate regulatory or supervisory authority for any such credit union.

§708.2 When permissible.

(a) When the requirements enumerated herein have been met, merger may be affected if:

(1) There has been compliance with National Credit Union Administration chartering policies (where the continuing credit union is a Federal credit union); or

(2) Permitted by state law or authorized by the state supervisory authority (where the continuing or merging credit union is a state credit union).

(b) In any case where the continuing credit union is federally-insured, and the merging credit union is not insured, a determination shall be made by the Board as to the potential risk to the National Credit Union Share Insurance Fund (NCUSIF).

§708.3 Special provisions for National Credit Union share insurance.

(a) Where the continuing credit union is not federally-insured, but the share accounts of the merging credit union are so insured, such insurance ceases as of the effective date of the merger. Members of the merging credit union shall be notified accordingly prior to any required voting activity to approve the merger.

(b) When a credit union's insurance is terminated in accordance with paragraph (a) of this section, it is not entitled to a rebate of premiums, but the continuing credit union shall be entitled to a refund of the unused portion of the premiums.

(c) Where the merging credit union is federally-insured and the continuing credit union is not so insured, but desires to be insured as of the date of the merger, an application shall be submitted to the Board when the merging credit union requests its approval of the merger proposal.

(d) An insurance premium will be assessed on the additional share accounts insured as a result of the merger. The amount of the premiums will be prorated as of the effective date of the merger on these additional share accounts.

§708.4 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of credit unions, a plan for the proposed merger shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report;

(4) Analyses of share values;

(5) Explanation of any proposed share adjustments;

(6) Explanation of any provisions for reserves, undivided earnings or dividends;

(7) Provisions with respect to notification and payment of creditors;

(8) Explanation of any changes relative to insurance of member accounts;

(9) Provisions for insuring that all assets and liabilities of the continuing credit union will conform with the requirements of the Act (where the continuing credit union is a Federal credit union); and

(10) Proposed charter amendments (where the continuing credit union is a Federal credit union).

§708.5 Submittal of merger proposal to Administration.

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the following information will be submitted to the Regional Director:

(1) The merger plan, as described in this part;

(2) Resolution of the boards of directors;

(3) Proposed Merger Agreement;

(4) Proposed Notice of Special Meeting of the Members (for merging Federal credit unions);

(5) Copy of the form of Ballot to be sent to the Members (for the merging Federal credit unions);

(6) Evidence that the state's supervisory authority is in agreement with the merger proposal (for state credit unions); and

(7) Application and Agreements for Insurance of Member Accounts (for continuing state credit unions desiring to become federally-insured).

(b) The Regional Director will review the proposal and forward it, with his recommendations, to the Board.

§708.6 Approval of merger proposal by Board.

(a) If the Board finds that the merger proposal complies with this and other parts of these regulations, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger. Provided, however, that in the event the Board determines that the merging credit union, if it is a Federal credit union, is in danger of insolvency, and that the proposed merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund, the Board may permit the merger to become effective without an affirmative vote of the membership of the merging Federal credit union, notwithstanding the provisions of section 708.7.

(b) Any proposed charter amendments for a continuing Federal credit union will be approved contingent upon the completion of the merger.

§708.7 Approval of the merger proposal by members.

(a) When the merging credit union is a Federal credit union, the members shall:

(1) Have the right to vote on the merger proposal in person at the annual meeting, if within 120 days after the Board approval, or at a special meeting to be called within 120 days of such approval, or by mail ballot postmarked no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

(2) Be given advance notice of the meeting at which the merger proposal is to be submitted, in accordance with the provisions of Article V, Meetings of Members, Federal Credit Union Bylaws. The notice shall:

(i) Specify the purpose of the meeting and time and place;

(ii) Include a summary of the merger plan, which shall contain, but not necessarily be limited to, current financial reports for each credit union, a combined financial report for the continuing credit union, analyses of share

values, explanation of any proposed share adjustments, explanation of any changes relative to insurance of member accounts;

(iii) State reasons for the proposed merger;

(iv) Provide name and location (to include branches) of the continuing credit union;

(v) Inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be postmarked no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

(vi) Be accompanied by a Ballot for Merger Proposal.

(b) The merger proposal of a merging Federal credit union must be approved by affirmative vote of a majority of the members of the credit union who vote on the proposal.

§708.8 Certification of vote on merger proposal.

The board of directors of the merging Federal credit union shall promptly certify the results of the membership vote to the Regional Director.

§708.9 Completion of merger.

(a) Upon approval of the merger proposal by the Board and by the members of each credit union where required, action may be taken to complete the merger. The boards of directors shall:

(1) Promptly certify the completion of the merger to the Regional Director; and

(2) Forward, along with the certification, the following documents:

(i) Financial reports for each credit union before the completion of merger;

(ii) A financial report for the continuing credit union after the completion of merger;

(iii) The charters of merging Federal credit unions; and

(iv) Insurance certificates for merging federally-insured credit unions.

(b) If the Board is satisfied that the merger has been accomplished in accordance with the approved plan, it shall cancel the charters of the Federal credit unions which have lost their identity in the merger.

Part 709

Division of Assets, Liabilities, and Capital

§709.0 Scope.

This part prescribes the procedures that will enable members of a Federal credit union who are a separately identifiable group to undertake an equitable division of their assets, liabilities and capital and charter a new Federal credit union.

§709.1 When permissible.

A Federal credit union may undertake an equitable division of its assets, liabilities and capital when:

(a) A group of persons within the field of membership of the Federal credit union constitutes a separately identifiable group which is eligible for a Federal credit union charter;

(b) A sufficient number of those in the separately identifiable group have authorized transfer of their share and loan accounts to justify the division; and

(c) The other requirements of the regulations in this part are met.

§709.2 Approval by board and appointment of committee.

Upon the board of director's approval of a proposition for the Federal credit union to divide its assets, liabilities and capital between itself and a Federal credit union to be organized to serve persons in a separately identifiable group with the existing Federal credit union's field of membership, the board shall:

(a) Appoint a committee of at least three members of the said group to assist in the preparation and execution of a plan for division and to subscribe to an Organization Certificate for the proposed new Federal credit union; and

(b) Promptly notify the Regional Director of these actions.

§709.3 Preparation of plan.

The board of directors shall prepare a plan for division which shall provide that:

(a) The members within the separately identifiable group shall have the option to be exercised in writing by a specified date, of (1) authorizing the transfer of their accounts to the new Federal credit union upon approval of its charter by the Administrator, or (2) maintaining their accounts in the existing Federal credit union, provided, however, the Bylaws of the existing Federal credit union would permit such retention.

(b) The remaining assets, liabilities and capital will be equitably divided; and

(c) The records will be closed and the division effected by a specified date, subsequent to but not later than six months after the date set for members to exercise their options as specified in §709.3(a).

§709.4 Notice of Options.

The board of directors shall give written notice of the options set forth in §709.3(a) to each person who would be eligible for membership in the proposed new credit union. The written notice shall contain a summary of the plan and a form for confirmation of account balances and authorization for transfer of accounts. If authorization is given to transfer an account, it shall be valid for six months from the date fixed for the exercise of the option.

§709.5 Submittal of Plan to Administration.

If a number of members, sufficient to make the division reasonable and feasible, have authorized the transfer of their accounts by the date fixed for exercising the option to transfer, the board of directors shall submit the following information to the Regional Director:

(a) A copy of the Plan for Division of Assets, Liabilities and Capital;

(b) A current financial and statistical report;

(c) A Certification of Acceptance of Option to Transfer Shares and Loans, summarizing the results of the Notice of Option to Transfer; and

(d) A schedule of the share and loan balances of all members who authorized the transfer of their accounts.

§709.6 Investigation for Charter and Insurance Application.

(a) An examiner will make the necessary investigation. If requirements are met and the plan appears acceptable, the examiner will assist in holding the charter-organization meeting and completing the required forms.

(b) The Regional Director will review the proposal and forward it, with his recommendation, to the Board for action.

§709.7 Approval of Plan by Board.

If the Board finds that the plan for division complies with this and other parts of these regulations, it will approve the plan and authorize the board of directors of the existing Federal credit union to present the proposal to the members for approval at an annual or special meeting as provided in §709.8.

§709.8 Approval of Plan by Members of the Existing Federal Credit Union.

(a) If the Board approves the plan for division, it may be submitted to the members at an annual meeting, if one is to be held at a time which will assure consummation of the plan within six months after the expiration of the option to transfer, or at a special meeting to be called as provided in the bylaws and held within the six-month period.

(b) The notice of the meeting shall:

(1) Be given to each member of the credit union;

(2) State that one of the purposes of the meeting is to vote on the proposed plan;

(3) Advise the members of the reasons for the proposal, the fact that the Board has given its approval, the number of eligible members who have authorized the transfer of their accounts, and the membership vote required for approval; and

(4) Be accompanied by a copy of the Plan for Division of Assets, Liabilities, and Capital.

(c) A majority of the members present and voting at the meeting must approve the plan in order for the board of directors to proceed with the division.

(d) The board of directors will promptly certify the results of the membership vote to the Regional Director.

§709.9 Issuance of Charter to the New Federal Credit Union and Completion of Division.

(a) If the plan was approved by the members of the existing Federal credit union as provided in §709.8, the Board will issue the charter and insurance certificate to the new Federal credit union.

(b) The division will be completed as of the date specified in the plan. Upon completion of the division, the new Federal credit union will be vested with all assets received and will be responsible for all liabilities and capital assumed.

(c) The boards of directors for both Federal credit unions will promptly certify the completion of the division to the Regional Director. Financial and statistical reports for both Federal credit unions, before and after the division, will accompany the certification.

Part 710

Voluntary Liquidation of Federal Credit Unions

§710.1 Approval of liquidation.

A Federal credit union may go into voluntary liquidation on approval of a majority of its members in writing or by a vote in favor of such liquidation by a majority of the members of the credit union at a regular meeting of the members or at a special meeting called for that purpose. Where authorization for liquidation is to be obtained at a meeting of members, notice in writing must be handed to each member at least 7 days before such meeting or mailed to each member at his last known address not less than 10 days before such meeting and the minutes of the meeting shall show the number of members present and the number that voted for and against liquidation. If approval by a majority of all members is not obtained at the meeting of members, authorization for voluntary liquidation may be obtained by having a majority of members sign a statement in substantially the following form:

We the undersigned members of the _____ Federal Credit Union, Charter No. _____, hereby request the dissolution of our credit union.

If approval by a majority of all members is not obtained within 90 days of the decision by the board to seek such approval, the board shall reopen the credit union in accordance with the provisions of §710.2 of this Part, or the credit union may be placed into involuntary liquidation by the Board.

§710.2 Notice of liquidation to National Credit Union Administration.

Within 10 days after the decision of the board of directors to submit the question of liquidation to the members, the president shall notify the Regional Director thereof in writing, setting forth in detail the reasons for the proposed action. Within 10 days after the action of the members on the question of liquidation, the president shall notify the Regional Director in writing as to whether or not a majority of the members approved the proposed liquidation. If a majority of the members has not authorized the liquidation and the board decides that the credit union should resume operations, the board may rescind its original resolution to present the question of liquidation to the members; but the board shall notify the regional director of its decision before resuming operations and set forth in detail the action which has been taken to correct the conditions that caused the board to vote liquidation.

§710.3 Transaction of business during liquidation.

(a) Immediately on decision by the board of directors of a Federal credit union to seek approval of the members for liquidation, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer of shares to another share account, granting of loans, and making investments other than short-term investments as specified in paragraph (b) of this section shall be suspended pending action by the members on the proposal to liquidate; and on approval by a majority of the members of such proposal, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer of shares to another share account, granting of loans, and making of investments other than short-term investments as specified in paragraph (b) of this section shall be discontinued permanently. Necessary expenses to complete liquidation shall, however, continue to be paid on authorization by the board of directors or liquidating agent during the period of liquidation.

(b) While the primary duty of the board of directors during liquidation is to convert loans and investments to cash at the earliest possible date, there may be intervals during which funds being accumulated prior to distribution may be advantageously placed in short-term, interest-bearing savings accounts in institutions whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Common trust funds approved as legal investments for Federal credit unions, deposits in credit unions insured by the Board, deposits in central credit unions, and short-term U.S. Government obligations, or short-term securities fully guaranteed as to principal and interest by the U.S. Government may be used as a source for the investment of such excess funds. The aforementioned deposits should be withdrawable upon demand. The liquidation of such investments should be timed so as to facilitate the planned distribution to the members.

(c) The board of directors or the liquidating agent must obtain approval from the Board prior to consummating any sale of assets which would not provide sufficient funds to pay shareholders at par. The request for such approval shall be transmitted to the Board by way of the Regional Director.

§710.4 Notice of liquidation to members.

Immediately on decision by the board of directors to seek approval of the members for liquidation and in accordance with the provisions of §710.1 of this Part, a notice of such decision shall be handed to each member or mailed to his last known address together with a request that the member furnish his statement of account or passbook, or confirm in writing the shares held by him in the Federal credit union and the loans owed by him to the Federal credit union.

§710.5 Notice of liquidation to creditors.

On approval of a majority of the members of a Federal credit union of a proposal to liquidate, the board of directors shall immediately have prepared and mailed to all creditors a notice of liquidation containing instructions to present their claims to the Federal credit union within 120 days for payment.

§710.6 Report at commencement of liquidation.

Within 20 days following the commencement date of voluntary liquidation of a Federal credit union, the treasurer or agent conducting the liquidation shall file with the Regional Director a financial and statistical report on Form FCU—109, a schedule showing the name, book number, share balance, and loan balance of each member and a schedule of delinquent loans containing pertinent comments as to the collectability of each delinquent loan.

§710.7 Reports during period of liquidation.

Federal credit unions in the process of voluntary liquidation shall file with the Regional Director a financial and statistical report on Form FCU—109 and a schedule of delinquent loans containing pertinent comments as to the collectability of each delinquent loan within 10 days from the close of each calendar quarter. Additional reports, as determined to be necessary by the Regional Director, shall be furnished promptly on written request.

§710.8 Examinations of Federal credit unions in voluntary liquidation.

When deemed advisable by the Regional director, an examination of the books and records of a Federal credit union may be made prior to, during, or following completion of voluntary liquidation. A fee for each such examination shall be assessed at the rate currently in effect for examinations of operating Federal credit unions as provided in §§701.7 and 701.8 of this chapter.

§710.9 Responsibility for conduct of voluntary liquidation.

The board of directors of a Federal credit union in voluntary liquidation shall be responsible for conserving the assets, for expediting the liquidation, and for equitably distributing the assets to the members. The board shall determine that all persons handling or having access to funds of the Federal credit union are adequately covered by surety bond. The board or a duly authorized liquidating agent shall appoint a custodian for the Federal credit union's records which are to be retained for 5 years after the charter is canceled. The board may appoint a liquidating agent and delegate all or part of these responsibilities to such agent and may authorize reasonable compensation for his services; and such liquidating agent shall be bonded for faithful performance of his duties. The supervisory committee shall be responsible for making audits semi-annually during the period of liquidation. One of these audits shall be a comprehensive annual audit covering the period elapsed since the previous comprehensive annual audit.

§710.9a Partial distribution.

With the written approval of the Regional Director, a partial distribution of the credit union's assets may be made to its members from cash funds available on authorization by its board of directors, or by a duly authorized liquidating agent whose appointment specifically includes such authority.

§710.10 Completion of liquidation.

After obtaining the necessary approval of a majority of the members and after all assets of the Federal credit union have been converted to cash or found to be worthless and all loans and debts owing to it have been collected or found to be uncollectable and all obligations of the Federal credit union have been paid, with the exception of shares due its members, the books shall be closed and the pro rata distribution to members computed.

§710.11 Distribution of assets.

Promptly after the pro rata distribution to members has been computed, checks shall be drawn for the amounts to be distributed to each member who has surrendered his statement of account, or passbook, or has given a written confirmation of his balance. The checks shall be mailed to such members at their last known address or handed to them in person. The statements of account, passbooks, or written confirmations submitted by members to verify balances shall be retained with the credit union records. The Regional Director shall be notified promptly of the date final distribution of assets to the members is started. Unclaimed share accounts which have been dormant for the period which makes them subject to the escheat or abandoned property laws of the State in which the Federal credit union is located shall be paid to the State as required by such laws.

§710.12 Final report.

Within 120 days after the final distribution to members is started, the Federal credit union shall furnish to the Regional Office the following:

(a) A schedule on an official form of unpaid claims, if any, due members who failed to surrender their statements of account, or passbooks, or confirm their balances in writing during liquidation whose share accounts are not payable to the State under applicable escheat or abandoned property laws, and of unpaid claims, if any, due members or creditors who failed to cash final distribution checks within the said 120 days; this schedule shall be accompanied by a certified check or money order payable to the National Credit Union Administration in the exact amount of the total of these unpaid claims. The Administration will deposit said funds in a special account with the Chief Disbursing Office of the Treasury of the United States where they will be held for the account of the individuals named on said schedule. Each such individual, or any authorized person on his behalf, may submit to the Administration a written claim for the amount of such funds held for him.

(b) A schedule on an official form showing the name, book number, share balance at the commencement of liquidation, pro rata share of

gain, and the amount of each unclaimed share account paid to the state under applicable escheat or abandoned property laws. The check number and date of payment to the state should be included in the schedule.

(c) A schedule on an official form showing the name, book number, share balance at the commencement of liquidation, pro rata share of gain, and the amount distributed to each member.

(d) A summary report on liquidation in duplicate on an official form.

(e) The Certificate of Dissolution and Liquidation on an official form signed under oath by the president, treasurer, or agent who conducted the liquidation and made the final distribution of assets to the members.

(f) The name and address of the custodian of the Federal credit union's records.

(g) The charter and insurance certificate of the Federal credit union.

§710.13 Retention of records.

All records of the liquidated credit union necessary to establish that creditors were paid and that member's shareholdings were equitably distributed shall be retained by a custodian appointed by either the board or the duly authorized liquidating agent of said Federal credit union for a period of 5 years following the date of cancellation of the charter.

§710.14 Cancellation of charter.

On proof that distribution of assets has been made to members and after receipt of the Certificate of Dissolution and Liquidation, the Board shall cancel the charter of the Federal credit union concerned.

§710.15 Further instructions and information.

Futher detailed instructions, information, and official forms pertaining to voluntary liquidations may be obtained from the Washington or Regional Offices of the Administration.

Part 711

Management Official Interlocks

§711.1 Authority, Purpose and Scope.

(a) *Authority.* This Part is issued under the provisions of the Depository Institution Management Interlocks Act ("Interlocks Act")(12 U.S.C. 3201 *et seq.*).

(b) *Purpose and scope.* The general purpose of the Interlocks Act and this Part is to foster competition by generally prohibiting a management official of a depository institution or depository holding company from also serving as a management official of another depository institution or depository holding company if the two organizations (1) are not affiliated and (2) are very large or are located in the same local area. This Part applies to management officials of federally insured credit unions.

§711.2 Definitions.

For the purpose of this Part, the following definitions apply:

(a) "Adjacent cities, towns, or villages" means cities, towns or villages whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is regarded as the boundary line of that city, town, or village for the purpose of this definition.

(b) "Affiliate" has the meaning given in section 202 of the Interlocks Act. For purposes of Section 202, an individual's shares include shares of members of his or her immediate family. For the purpose of section 202(3)(B) of the Interlocks Act, an affiliate relationship based on common ownership does not exist if the appropriate Federal supervisory agency or agencies determine, after giving the affected persons the opportunity to respond, that the asserted affiliation appears to have been established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the agencies will consider, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate with that person's ownership of shares in the other organization. "Immediate family" includes mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(c) "Community" means city, town, or village, or contiguous or adjacent cities, towns or villages.

(d) "Contiguous cities, towns, or villages" means cities, towns, or villages whose borders actually touch each other.

(e) "Depository holding company" means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act) having its principal office located in the United States.

(f) "Depository institution" means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, having a principal office located in the United States. A United States office, including a branch or agency, of a foreign commercial bank is a "depository institution."

(g) "Depository organization" means a depository institution or a depository holding company.

(h) "Management official" means an employee or officer with management functions (including a branch manager), a director (including an advisory director or honorary director), a trustee of a business organization under the control of trustees (e.g., a mutual savings bank), or any person who has a representative or nominee serving in any such capacity. "Management official" does not mean a person whose management functions relate exclusively to the business of retail merchandising or manufacturing, or a person whose management

functions relate principally to the business outside of the United States of a foreign commercial bank. "Management official" does not include persons described in the provisos of section 202(4) of the Interlocks Act.

(i) "Office of a depository institution" means a principal office or a branch office located in the United States, but does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(j) "Person" means natural persons, corporations, or other businesses.

(k) "Representative or nominee" means a person who serves as a management official and has an express or implied obligation to act on behalf of another person with respect to management responsibilities. Whether a person is a "representative or nominee" depends upon the facts in individual cases, and the appropriate Federal supervisory agency or agencies will determine, after giving the affected persons an opportunity to respond, whether a person is a "representative or nominee." Certain relationships, including family, employment, agency relationships, or the ability and exercise of ability by a shareholder of a depository organization to elect a director may be evidence of such an express or implied obligation. For the purposes of this subsection, "person" shall include only natural persons.

(l) "Total assets" means assets measured on a consolidated basis as of the close of the organization's last fiscal year. The total assets of a depository holding company include the total assets of its depository institution affiliates for the purposes of section 711.3(b) of this Part, and include the total assets of all of its affiliates for the purposes of section 711.3(c) of this Part. Total assets of a United States branch or agency means total assets of such branch or agency itself, exclusive of the assets of the other offices of the foreign commercial bank.

(m) "United States" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

§711.3 General Prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if: (1) offices of both are located in the same community; (2) offices of depository institution affiliates of both are located in the same community; or (3) an office of one of the depository organizations is located in the same community as an office of a depository institution affiliate of the other.

(b) *SMSA.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if: (1) offices of both are located in the same Standard Metropolitan Statistical Area ("SMSA") and either has total assets of $20 million or more; (2) offices of depository institution affiliates of both are located in the same SMSA and either of the depository institution affiliates has total assets of $20 million or more; or (3) an office of one of the depository organizations is located in the same SMSA as an office of a depository institution affiliate of the other and either the depository organization or the depository institution affiliate has total assets of $20 million or more.

(c) *Major Assets.* Without regard to location, a management official of a depository organization with total assets exceeding $1 billion or a management official of any affiliate of the greater than $1 billion depository organization may not serve at the same time as a management official of a nonaffiliated depository organization with total assets exceeding $500 million or a management official of any affiliate of the greater than $500 million depository organization.

§711.4 Permitted Interlocking Relationships.

(a) *Interlocking relationships permitted by statute.* The prohibitions of section 711.3 do not apply in the case of any one or more of the following organizations or their subsidiaries:

(1) a depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(2) a corporation operating under section 25 or 25(a) of the Federal Reserve Act ("Edge Corporations" and "Agreement Corporations");

(3) a depository organization that has been placed formally in liquidation, or that is in the hands of a receiver, conservator, or other official exercising a similar function;

(4) a credit union being served by a management official of another credit union;

(5) a State-chartered savings and loan guaranty corporation; or

(6) a Federal Home Loan Bank or any other bank organized solely for the purpose of serving depository institutions (commonly referred to as "bankers' banks") or solely for the purpose of providing securities clearing services and services related thereto for depository institutions, securities companies, o both.

(b) *Interlocking relationships permitted by Board order.* A management official of a federally insured credit union may apply for the Board's prior approval to enter into a relationship involving another depository organization that would otherwise be prohibited under section 711.3 of this Part if the relationship falls within any of the classifications enumerated in this paragraph. If the relationship involves a depository organization subject to the supervision of another Federal supervisory agency as specified in section 207 of the Interlocks Act, the management official must also obtain the prior approval of that other agency.

(1) *Organization in low income area; minority or women's organization.* A management official of a federally insured credit union may serve at the same time as a management official of a depository organization (i) located, or to be located, in a low income or other economically depressed area, or (ii) controlled or managed by persons who are members of minority groups or by women, subject to the following conditions: (A) the appropriate Federal supervisory agency or agencies determine the relationship to be necessary to provide management or operating expertise to the organizations specified in (i) or (ii), above; (B) no interlocking relationship permitted by this paragraph shall continue for more than five years; and (C) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency or agencies in any specific case.

(2) *Newly-chartered organization.* A management official of a federally insured credit union may serve at the same time as a management official of a newly-chartered depository organization, subject to the following conditions: (i) no interlocking relationship permitted by this paragraph shall continue for more than two years after the other organization commences business; (ii) the appropriate Federal supervisory agency or agencies determine the relationship to be necessary to provide management or operating expertise to the newly chartered organization; and (iii) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency or agencies in any specific case.

(3) *Conditions endangering safety or soundness.* A management official of a federally insured credit union may serve at the same time as a management official of two depository organizations (or affiliates thereof) if the primary Federal supervisory agency of one of the depository organizations believes that such depository organization faces conditions endangering the organization's safety or soundness, subject to the following conditions: (i) the appropriate Federal supervisory agency or agencies determine the relationship to be necessary to provide management or operating expertise to the organization facing conditions endangering safety or soundness; and (ii) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency or agencies in any specific case.

(4) *Credit union sponsored by another depository organization.* A management official of a federally insured credit union that is sponsored by another depository organization primarily to serve its employees or the employees of its affiliates may serve at the same time as a management official of such sponsoring depository organization.

(5) *Loss of management officials due to changes in circumstances.* If a depository organization experiences a change in circumstances described in paragraphs (a)(1), (b)(1), or (b)(2) of section 711.6, and the change requires the termination of service at the depository organization of 50 per cent or more of the organization's directors or of 50 per cent or more of the total management officials of the depository organization, such management officials may continue to serve in excess of the time periods provided in paragraphs (a)(1), (b)(1), (b)(2), and (b)(2) of section 711.6, provided that: (i) the appropriate Federal supervisory agency or agencies determines that the service by such management officials is necessary to provide management or operating expertise; (ii) each management of-

ficial so affected agrees to sever the prohibited interlocking relationship no later than 30 months after the change in circumstances; (iii) the depository organization submits a proposal for the orderly termination of service by such management officials over the time period provided, and (iv) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency or agencies in any specific case.

§711.5 Grandfathered Interlocking Relationships.

(a) A person whose interlocking service in a position as a management official of two or more depository organizations began prior to November 10, 1978, and was not immediately prior to that date in violation of section 8 of the Clayton Act (15 U.S.C. §19) is not prohibited from continuing to serve in such interlocking positions until November 10, 1988, except as provided in section 711.6(a) of this Part.

§711.6 Change in Circumstances.

(a)(1) If a person's service as a management official is grandfathered under section 711.5 of this Part, the Person must terminate such service if the service becomes prohibited by the occurrence of any of the following changes in circumstances:

(i) one of the depository organizations involved in the interlocking relationship acquires or is acquired by, is merged into or with, or is consolidated with another depository organization for which prior to the transaction the person could not have served as a management official under section 711.3 of this Part; or

(ii) One of the depository organizations involved in the grandfathered interlocking relationship, or its depository institution affiliate, establishes an initial office in the same community as the other depository organization, or its depository institution affiliate, or both of the depository organizations, or their depository institution affiliates, establish an office in a community or SMSA where neither previously had an office.

(2) If a person's grandfathered service becomes prohibited under paragraph (a)(1) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited interlocking relationship through the date of the next regularly scheduled annual shareholders' meeting of any of the organizations involved, whichever occurs last, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period. However, the person may request the appropriate agency or agencies to grant an additional extension of time to continue the interlocking relationship, but the prohibited interlocking relationship may not continue for more than 15 months from the date of the change in circumstances. If the change in circumstances occurred prior to the effective date of this section, the change will be considered to have occurred on the effective date of this section for the purposes of this subparagraph.

(b)(1) If a person's service as a management official is not grandfathered under section 71.5 of this Part and becomes prohibited as a result of an increase in the asset size of an organization due to natural growth, a change in SMSA or community boundaries, or the designation of a new SMSA, the person has 15 months from the date of the change in circumstances to comply with this Part, unless the appropriate Federal spervisory agency or agencies take affirmative action in an individual case to establish a shorter period. If the change in circumstances occurred prior to the effective date of this section , the change will be considered to have occurred on the effective date of this section for purposes of this subparagraph.

(2) If a person's service as a management official is not grandfathered under section 711.5 of this Part and becomes prohibited as a result of an acquisition, merger, consolidation, or the establishment of an office, the person may continue to serve as a management official of all organizations involved in the prohibited interlock through the date of the next regularly scheduled annual shareholders' meeting of any of the organizations involved, whichever ocurs last, unless the appropriate Federal supervisory agency or agencies take affirmative action in an

individual case to establish a shorter period. However, the person may request the appropriate agency or agencies to grant an additional extension of time to continue the interlocking relationship, but the prohibited interlocking relationship may not continue for more than 15 months from the date of the change in circumstances. If the change in circumstances occurred prior to the effective date of this section, the change will be considered to have occurred on the effective date of this section for purposes of this subparagraph.

§711.7 Enforcement.

The National Credit Union Administration Board administers and enforces the Interlocks Act with respect to federally insured credit unions and may refer to the case of a prohibited interlocking relationship involving any such credit union, regardless of the nature of any other organization involved in the prohibited relationship, to the Attorney General of the United States to enforce compliance with the Interlocks Act and this Part.

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Part 720

Description of Office, Disclosure of Official Records Availability of Information, Promulgation of Regulations

Subpart A—Production or Disclosure Under 5 U.S.C. 552.

§720.1 Scope and application.

(a) Scope. Subparts A and B or Part 720 implement the Federal Freedom of Information and Privacy Acts, respectively. Those Acts regulate the information practices of Federal agencies only, and thus, Part 720 pertains to the activities of the National Credit Union Administration only and does not apply to Federal credit unions.

(b) The rules contained in this Part are promulgated pursuant to the provisions of Subchapter II of Chapter 5 of Title 5, United States Code, the Federal Credit Union Act (12 U.S.C. 1751, *et seq.*) and other applicable laws. In accordance with sections 552(a)(1) of Title 5, United States Code, this Part includes (a) descriptions of the Administration's central and regional offices and the places at which, the employees from whom, and the methods whereby, the public may obtain information or decisions, or make requests, (b) places at which forms and instructions are available, and (c) procedures for the promulgation of regulations. Regulations relating to statements of general policy, rules of procedure, or interpretations of general applicability are contained in other Parts of this Chapter according to subject matter. This part also contains rules relating to types of information available to the public, fee schedules, and determinations on requests by the Administration, as required by section 552 of Title 5, United States Code.

§720.2 Central and regional organization.

720.2(a) General organization. The National Credit Union Administration (hereinafter referred to as the "Administration") is composed of the National Credit Union Administration Board (hereinafter referred to as the "Board"), with a central office in Washington, D.C., six regional offices, and a corporation known as the National Credit Union Administration Central Liquidity Facility.

(b) Central Office

(1) The Board. The Board consists of three Members appointed by the President, with the advice and consent of the Senate, for six year terms (except for two of the initial Members who will serve staggered two and four year terms). One Board member is designated by the President to be Chairman of the Board. A second member is designated by the Board to be Vice-Chairman. The Board also serves as the Board of Directors of the National Credit Union Administration Central Liquidity Facility.

(2) Secretary of the Board. The Secretary of the Board is responsible for the secretarial functions of the National Credit Union Administration Board. The Secretary's responsibilities include preparation of agendas for the meetings of the Board, preparation and maintenance of the minutes of all official action of the Board, and signing and executing all documents adopted and issued by or on behalf of the Board. The Secretary also serves as the Secretary of the National Credit Union Administration Central Liquidity Facility.

(3) Office of General Counsel. Generally, the Office of General Counsel has responsibility for all legal matters affecting the Administration. Specifically, the duties of the General Counsel include representing the Administration in litigation and administrative hearings or in assisting attorneys responsible for the conduct of such litigation, responsibility for legislative matters, rules and regulations, advising on all matters of law and serving as claims officer with respect to claims arising under the Federal Tort Claims Act. The General Counsel is aided by a Deputy General Counsel, by Assistant General Counsels for Operations and Litigation and for Lending Practices and Administrative Procedures, and by a Director of Congressional Relations.

(4) *Director, Office of Administration.* The Director of the Office of Administration is the official custodian of records for the Administration and performs duties relating to personnel management, career development, training (exclusive of examiner and credit union related training), equal employment opportunity, direction of general services, internal security, coordination of public services, and is responsible for appellate determinations on requests for information. He is aided by a Deputy Director and Assistant Directors for the Division of Personnel, Office Services and Training and Career Development.

(5) *Director, Office of Examination and Insurance.* The Director of the Office of Examination and Insurance performs duties relating to the formulation of standards and procedures for examination and supervision of Federal credit unions, formulation and implementation of procedures for administration of the Federal Share Insurance Program, formulation and implementation of chartering, insurance and liquidation objectives, and procedures relating to mergers, conversions and divisions of Federal credit unions. He is aided by a Deputy Director and Assistant Directors of the Division of Chartering and Insurance, and Examination and Supervision.

(6) *Director, Office of Internal Audit and Investigations.* The Director of the Office of Internal Audit and Investigation performs duties relating to operational audits of the field segments of the Administration, measuring effectiveness of Administration policies at the regional and examiner levels, and the responsibilities of the Administration under the Federal Credit Union Act and Civil Service Commission requirements.

(7) *Office of the Comptroller.* The Comptroller performs duties relating to the financial management activities of the Administration in the areas of preparation and control of financial plans, fiscal accounting and budget, management of the Operating and Share Insurance Funds, investments, assets acquired from liquidating credit unions, and operations of loan management and share payout functions. He also coordinates certain disbursing activities with respect to liquidations with the Director of the Office of Examination and Insurance. The Comptroller is assisted by a Deputy Comptroller, and Assistant Comptroller for Acquired Assets, Financial Management, Information Systems and Management and Planning.

(8) *Director, Office of Policy Analysis.* The Director of the Office of Policy Analysis conducts research and analytical studies in the fields of cooperative thrift, credit, the impact of the national economy on the credit union movement, and other matters of concern to the Administration, and provides policy advice to the Board and operating officials. The Director is assisted by an Assistant Director.

(9) *Director, Office of Consumer Affairs.* The Director of the Office of Consumer Affairs directs the Administration's programs for consumer law compliance, consumer education and complaint handling. The Director provides policy advice to the Board on issues affecting consumers. The Director is assisted by a Deputy Director, an Assistant Director for Enforcement and an Assistant Director for Complaint Handling and Unfair Practices.

(10) *Public Information Office.* The Public Information Officer performs duties relating to the planning and executing of information and public affairs programs, preparation of various publications, development of planned actions and objectives, and providing for the exposure and understanding of credit unions.

(c) *Regional Offices.* (1) There are six Regional Offices of the Administration. The office address and the geographical area covered by each is as set forth on the following page.

(2) A Regional Director is in charge of each regional operation. The Regional Director performs such duties as directing the chartering, insurance, examination, and supervision programs, managing regional resources, directing the Administration's programs within the region, maintaining good public relations, operating an Information Service Center, and is responsible for initial determinations on requests for information properly made to the regional office. He is aided by an Assistant Regional Director, a Chief of Supervision and Examination, and a Chief of Chartering, Insurance and Liquidation. In addition, each region is divided into Examiner districts; groups of examiners being subordinate to Supervisory Examiners, who in turn report directly to the Regional Director.

(d) National Credit Union Administration Central Liquidity Facility.

(1) *General Organization.* The National Credit Union Administration Central Liquidity Facility ("the Facility") was created by P.L. 95-630 to improve general financial stability by providing

Region No.	Area Within Region	Office Address
I	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, Virgin Islands.	441 Stuart Street, 6th Floor, Boston, Massachusetts, 02116
II	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.	Federal Building 228 Walnut Street, Box 926 Harrisburg, Pennsylvania 17108
III	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississipi, North Carolina, South Carolina, Tennessee.	1365 Peachtree Street, Suite 500, Atlanta, Georgia 30367
IV	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, Ohio, South Dakota, Wisconsin	New Federal Building, 234 N. Summit Street, Room 704 Toledo, Ohio 43604
V	Arizona, Colorado, Idaho, Kansas, Montana Nebraska, Nevada, New Mexico, Oklahoma, Texas, Utah, Wyoming.	515 Congress Avenue, Suite 1400, Austin, Texas 78701
VI	Alaska, American Samoa, California, Guam, Hawaii, Oregon, Washington.	Two Embarcadero Center, Suite 1830, San Francisco, California 94111

funds to meet the liquidity needs of credit unions. It is a "mixed ownership Government corporation" (Section 856 of the Government Corporation Control Act, 31 U.S.C. 841, *et seq.*) within the National Credit Union Administration. The Facility's corporate headquarters are located at 1776 G Street, N.W., Washington, D.C. 20456. The Central and Regional offices of the National Credit Union Administration provide services and information to the Facility on a cost-reimbursable basis and, depending upon need, employees of the Facility may be assigned to the regional offices. The Facility is also assisted in its operations by central credit unions designated as "Agent members" which provide Facility services to other credit unions which do not have direct access to the Facility.

(2) *Board of Directors.* The Facility is managed by the National Credit Union Administration Board which acts as the Facility's Board of Directors ("the Board"). The Chairman of the National Credit Union Administration Board is the Chairman of the Board of Directors of the Facility. The Board is assisted in managing the Facility by the following officers who are appointed by and are responsible to the Board: President, Vice President for Credit, Vice President for Finance, Secretary and Treasurer.

(3) *President.* The President is the chief executive officer of the Facility and works under the general supervision of the Board. The President provides overall executive direction and guidance and is responsible for the ongoing management of the Facility. The President manages the Facility staff and their activities both in the central office and the regions; provides general supervision to the other officers of the Facility; and initiates and maintains working relationships with the credit union community, other Federal and State government authorities, and the banking and investment communities.

(4) *Vice President for Credit.* The Vice President for Credit is responsible for planning, implementing, and directing programs related to the Facility's lending policies and procedures. The Vice President for Credit develops and implements the Facility's credit policies, and procedures, and regulations, and is responsible for monitoring lending activity throughout the Facility to assure conformity with these policies, procedures and regulations. The Vice President for Credit also develops and maintains a working relationship with State supervisors, State insurance authorities, and Federal financial agencies.

(5) *Vice President for Finance.* The Vice President for Finance is responsible for planning, implementing, and directing borrowing and investment programs for the purpose of financing Facility operations. The Vice President for Finance has responsibility for directing Facility borrowing from the Federal Financing Bank, the securities market, and from any other source, and also has responsibility for the Facility's investing of funds in the U.S. Government and agency securities. The Vice President for Finance develops and maintains working

relationships with the investment and banking communities and with Federal financial agencies.

(6) *Treasurer.* The Treasurer develops and manages the Facility's operational systems for the purposes of monitoring and reporting the use of the Facility's funds. The Treasurer establishes accounting policies and procedures for the Facility, and maintains working relationships with Agent members, State supervisors, and State insurance corporations, and Federal financial agencies.

(7) *Secretary.* The Secretary of the National Credit Union Administration Board serves as the Secretary of the Facility. The Secretary has responsibility for preparing the Board's agenda and giving all required notices, keeping the minutes of the Board, and maintaining all records of the Facility other than those of a financial nature.

(8) *Operational Assistance.* The National Credit Union Administration's regional offices and offices of General Counsel, Examination and Insurance, Policy Analysis, Internal Audit and Investigation, Administration, Comptroller, and Public Information provide services to the Facility as needed. The Facility reimburses the Administration for services provided.

§720.3 Information Made Available to the Public.

(a) Except to the extent that the matters set forth herein relate to or contain information which is exempted from the public disclosure provisions of section 3 of the Administrative Procedure Act, as amended (5 U.S.C. 552), or other law, and as set forth in § 720.4, the Administration makes available for public inspection and copying, upon request made in accordance with the provisions of § 720.6, (1) the final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases, (2) those statements of policy and interpretations which have been adopted by the Administration and are not published in the FEDERAL REGISTER, and (3) Administrative staff manuals and instructions to staff affecting a member of the public, unless the above materials are promptly published and copies offered for sale.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Administration may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. In each case the justification for the deletion shall be fully explained in writing.

(c) The Administration also maintains current indices providing identifying information for the public as to any matter referred to in paragraph (a) of this section issued, adopted, or promulgated after July 4, 1967. Manuals relating to general and technical information and research publications are in the "NCUA Publications List," which indicates those items available from the Administration or the Government Printing Office. Additional manuals, booklets and forms prepared by the Administration are listed in the "NCUA Catalog." Statements of policy are maintained in a Directives Control System and listed in the "NCUA Directives Control Index." A master list of Federal credit unions is maintained and available as provided in §701.17. The Administration has determined that publication of the indices is unnecessary and impractical, but copies of indices will be provided on request at duplication costs and are available for public inspection and copying. The listing of any material in any index is for the convenience of possible users of the materials and does not constitute a determination that all of the items listed will be disclosed or are subject to disclosure.

(d) The materials referred to in paragraph (a) of this section may be relied on, used, or cited as precedent by the Administration against a party provided (1) it has been indexed and either made available or published, or (2) the party has actual and timely notice of the terms thereof.

(e) Except with respect to records made available under this section or published in the FEDERAL REGISTER, or to the extent that records relate to or contain information which is exempt from the public disclosure provisions of section 3 of the Adminstrative Procedure Act, as amended (5 U.S.C. 552), or other law, the Administration, upon any request which reasonably describes records and made in accordance with §720.6, will make such records available to any person who agrees to pay the direct costs of searching and duplication as specified in §720.5. A reasonable description is

one which is sufficient to enable a professional employee of the Administration who is familiar with the subject area of the request to locate the record with a reasonable amount of effort.

§720.4 Unpublished, Confidential and Privileged Information.

(a) All records, including files, documents, reports, books and accounts, relating to any credit union, or the internal affairs of the Administration, or any officer, employee, or agent thereof, are confidential and privileged and not subject to disclosure, except as otherwise provided in this Part, if such records are: (1) specially authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order; (2) related solely to the internal personnel rules and practices of the Administration; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Administration; (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory records compiled for law enforcement purposes to the extent provided in the Administrative Procedure Act, as amended (5 U.S.C. 552(b)(7)); (8) contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of the Administration; and (9) related to proceedings for cease and desist and suspension or removal orders or for the termination of the insured status of any credit union.

(b) Any reasonably segregable portion of a record will be provided to any person requesting such record after deletion of the portions which are exempt under this section.

§720.5 Fee Schedule for Document Search and Duplication.

(a) A fee shall be assessed for the searching and processing of requested documents on the following basis:

Direct cost of: Clerical time, $4.36 per hour; professional time, $11.19 per hour; charge per page of material duplicated, $.25.

Computer costs shall be assessed in accordance with a standard formula based on computer time required. A computer cost formula shall be furnished to the requester at the time the request is granted.

Actual cost of transportation of people or records if required to process the request.

(b) Estimates of fees shall be furnished to the requester prior to initiation of the search for requested material if it appears that the fee will exceed $20 unless the request specifically states that whatever cost is involved will be assumed by the requester. Where advice as to the estimated fee is required, such advice shall be promptly forwarded to the requester upon physical receipt of the request. A request will not be deemed to have been received, for the purpose of computing the time limitations in §720.7, until the requester is advised that the estimated cost will exceed $20 and the requester agrees to assume such cost. Requesters will be financially liable for any fees assessed up to $20 without preapproved estimate.

(c) If the estimated fees exceed $100, a deposit of 20 per centum of such amount must be made within three days after the requester agrees to proceed with the request at the estimated cost.

(d) Fees shall be assessed even when no records or documents responsive to the request, or no records or documents not exempt from disclosure, are found.

(e) Fees may be waived if the request originates from a Member of Congress or from any Federal, State, or local government entity, or if the responsible officer in the appropriate Information Center otherwise determines that disclosure of the information will be of general benefit to the public. Fees may also be waived if the search is unproductive and the cost is minimal.

§720.6 Requests for Information and Determinations.

(a) *Information Centers.* The central office and the regional offices are designated as Informa-

tion Centers for the Administration. The Deputy Director of the Office of Administration is responsible for the operation of the Information Center maintained at the central office. The Regional Director is responsible for the operation of the Information Center in his regional office.

(b) *Certain Publications.* §§701.14-701.17 of this Chapter describe certain manuals, booklets and other materials which are available and the places where they may be obtained or inspected and copied.

(c) *Method of Request.*—(1) *Indices.* Requests for the indices referenced in §720.3(c) should be addressed to the Regional Director exercising authority over the geographical area involved as indicated in §720(c)(1) and at the address stated therein. As a matter of convenience, in appropriate situations, such requests may be addressed to the Deputy Director of the Office of Administration, 1776 G Street, NW., Washington, D.C. 20456. The indices provided will indicate whether the central or regional Information Center is the appropriate supplier of the particular items listed.

(2) *Other Records.* Requests for records made under §720.3(e) should be addressed to the appropriate Regional Director if it is known that the requested records are within his custody. When the location of requested records is not known, or it is known that such records are located in the central office, the request should be addressed to the Deputy Director of the Office of Administration at the address stated in subsection (c)(1). Failure to properly address a request may defer the date of receipt by the Administration from which the time limitation stated in §720.7(a)(1) is computed to take account of the time reasonably required to forward the request to the appropriate office or employee.

(3) *Identification of Request.* Requests for information available under §720.3 should be clearly identified by the requester on the envelope and in the request by using the indicator "FOIA—REQUEST" in order to facilitate processing within the Administration.

(4) *Time.* All requests for information of any type must be made to the Administration during normal business hours.

(5) *Oral requests.* Oral requests may be dealt with orally, but if the requester is dissatisfied with the disposition of such a request, he will be required to submit a written request in accordance with this section.

§720.7 Agency Determination.

(a) Upon any request for records published in the FEDERAL REGISTER, or available under §720.3, the Administration will:

(1) determine within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and will immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the Director of the Office of Administration any adverse determination; and

(2) make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the Administration will notify the person making such request of the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4). An appeal must be in writing and filed within 30 days from receipt of the initial determination (in cases of denials of an entire request), or from receipt of any records being made available pursuant to the initial determination (in cases of partial denials). In those cases where a request or appeal is not addressed to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(b) In unusual circumstances as specified herein, the time limits prescribed in either paragraph (a)(1) or (a)(2) of this section may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice will specify a date that would result in an extension for more than 10 working days. As used in this subsection, but only to the extent reasonably necessary to the proper processing of the particular request, "unusual circumstances" means:

(1) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) the need for consultation, which will be conducted with all practicable speed, with

another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(c)(1)In appropriate situations or as indicated in §720.6, the Regional Directors or the Deputy Director of the Office of Administration, or, in their absence, the officer acting in their stead, are responsible for making the initial determination on whether to grant or deny a request for information. Such officials may refer a request to a professional employee of the Administration who is familiar with the subject area of the request. Other members of the Administration's staff may aid the above named officials by providing information, advice, recommending a decision, or implementing a decision, but no employee of the Administration other than the above named officials may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in paragraph (a)(1) of this section except as provided in §720.6(c)(2) or unless the request involves an unusual circumstance as provided in paragraph (b) of this section.

(2) The Director of the Office of Administration is the official responsible for determining all appeals from initial determinations. In case of his absence, the appropriate officer acting in his stead shall make the appellate determination, unless such officer was responsible for the initial determination in which case the Vice-Chairman of the National Credit Union Administration Board will make the appellate determination.

(3) All appeals should be addressed to the Director of the Office of Administration in the central office and should be clearly identified as such on the envelope and in the letter of appeal by using the indicator "FOIA—APPEAL". Failure to properly address an appeal may defer the date of receipt by the Administration from which the time limitation stated in paragraph (a)(2) of this section is computed to take account of the time reasonably required to forward the appeal to the Assistant Administrator.

(d) Any person making a request to the Administration for records, published in the FEDERAL REGISTER, or available under §720.3 shall be deemed to have exhausted his administrative remedies with respect to such request if the Administration fails to comply with the applicable time limit provisions of this section. On complaint filed in the appropriate U.S. District Court, if the Government can show exceptional circumstances exist and that the Administration is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the Administration additional time to complete its review of the records. Upon any determination by the Administration to comply with a request for records, the records will be made promptly available to such person making such request. Any notification of denial of any request for records under this section will set forth the names and titles or positions of each person responsible for such denial of such request.

(e) In those cases where it is necessary to find and examine records before the legality or appropriateness of their disclosure can be determined, and where, after diligent effort, this has not been achieved within the required period, the Administration may advise the person making the request that a determination to presently deny the request has been made because the records have not been found or examined, that this determination will be reconsidered when the search or examination is completed and the time within which completion is expected, but that the person making the request may immediately file an administrative appeal.

§720.8 Promulgation of Rules and Regulations.

(a) *Notice.* Except as provided in paragraph (b) of this section or as otherwise excepted by law, general notice of proposed rulemaking, including amendment or repeal, will be published in the FEDERAL REGISTER, and such notice will include (1) either the terms or substance of the proposed rule or a description of the subjects and issues involved, (2) a statement of the time, place, and nature of the public rulemaking procedure, and (3) reference to the authority under which the rule is proposed. Notice shall also be mailed to members of the Board.

(b) *Exceptions.* Any proposed amendment or rule may be adopted by the administration without compliance with the requirements of this section if it involves any matter relating to Administration management or personnel or to public property, loans, grants, benefits, or contracts, or if persons subject to any such proposed amendment or rule are named and either personally served or otherwise have actual notice thereof in accordance with law, or it grants or

recognizes exemptions or relieves restrictions, or which is deemed to apply to interpretive rules, general statements of policy, or rules of Administration organization, procedure, or practice, or when the Administration for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) *Public participation.* Interested persons will be afforded an opportunity to participate in the making of any rule, except as provided in paragraph (b) of this section, or otherwise excepted by law, through the submission of written data, views, or arguments, delivered within the time prescribed in the general notice, to the Board, National Credit Union Administration, 1776 G Street N.W., Washington, D.C. 20456. The Board may, when deemed appropriate, provide an opportunity for oral presentation. Any interested person may petition for the issuance, amendment, or repeal of any rule by submitting such petition in writing to the Board together with a complete and concise statement of the petitioner's interest in the subject matter and the reasons why the petition should be granted.

(d) *Effective dates.* No rule issued by the Adminstration shall be effective less than the 30 days after publication in the FEDERAL REGISTER except as provided in paragraph (b) of this section, or otherwise excepted by law.

(e) *Amendment and repeal.* The Administration expressly reserves the right to alter, amend or repeal the whole or any part of any rule or regulation.

§720.9 National Security Information Procedures.

(a) *Program.*

(1) The Director of the Office of Admnistration (Director) is designated as the person responsible for implementation and oversight of information security program procedures. The Director receives questions, suggestions and complaints regarding all elements of this program. The Director is solely responsible for changes to the program and assures that the program is consistent with Executive Order 12065.

(2) The Director is the agency's official contact for declassification requests submitted under the provisions of E.O. 12065, regardless of the point of origin of such requests. The Director is also responsible for assuring that requests submitted under the Freedom of Information Act (5 U.S.C. §552) are handled in accordance with that Act.

(b) *Procedures.*

(1) *Mandatory Review.* All declassification requests made by a member of the public, by a government employee or by an agency shall be handled by the Director or the Director's designee. Under no circumstances shall the Director refuse to confirm the existence or non-existence of a document under the Freedom of Information Act or the Mandatory Review provisions of Executive Order 12065 unless the fact of its existence or non-existence would itself be classifiable under E.O. 12065. NCUA has no authority to classify or declassify data; NCUA, however, occasionally handles data that has been classified by another agency. The Director shall refer all declassification requests to the agency that orginally classified the data. The Director (or the Director's designee) shall notify the requesting person or agency that the request has been referred to the originating agency and that all further inquiries and appeals must be made directly to the other agency.

(2) *Handling & Safeguarding.* All data marked "Top Secret," "Secret," and "Confidential" shall be delivered to the Director or the Director's designee immediately upon receipt. The Director shall advise recipients of such data the name of the current designee. If the Director or the designee is unavailable to receive such documents, the documents shall be turned over to the Freedom of Information Officer who shall lock them, unopened, in the combination safe located in the Office of Administration until the Director is available. If the Freedom of Information Officer is unavailable, the documents shall be delivered to the Director of the Division of Personnel who shall lock them, unopened, in the combination safe in the Division of Personnel. Under no circumstances shall classified materials that cannot be delivered to the Director be stored other than in the two designated safes.

(3) *Reproduction.* Reproduction of classified material shall take place only in accordance with E.O. 12065, Section 4-4, and any limitations imposed by the originator. Should copies be made, they are subject to the same controls

as the original document. Records showing the number and distribution of copies (except as provided in paragraph (b)(2) of this section) shall be maintained by the Director and the log stored with the original documents.

(4) *Storage.* All classified documents (except as provided in paragraph (b)(2) of this section), shall be stored in the combination safe located in the Director's Office. The combination shall be changed as required by Information Security Oversight Office (ISOO) Directive No. 1, Section IV F 5a. The combination shall be known only to the Director and the Director's designee holding the proper security clearance.

(5) *Employee Education.* The Director shall send a memo to every NCUA employee who (A) has a security clearance and (B) may handle classified materials. This memo shall describe NCUA procedures for handling, reproducing and storing classified documents. The Director shall require each such employee to review E.O. 12065 and appropriate ISOO Directives. All subsequently hired employees who have the proper security clearance and may handle classified documents shall be instructed in these procedures at the outset of their employment.

(6) *Agency Terminology.* The National Credit Union Administration's central offices shall use the terms "Top Secret," "Secret," or "Confidential" only in relation to materials classified for national security purposes.

[Sections 720.10 through 720.19 Reserved for future use.]

Subpart B—Protection of Privacy Individual Records Under 5 U.S.C. 552a.

§720.20 Purpose and scope.

(a) This subpart contains the regulations of the National Credit Union Administration implementing the Privacy Act of 1974, Pub. L. 93-579. The regulations apply to all records which are maintained by the Administration, contain information about an individual including some means of identifying the individual and are contained in a system of records, from which information is retrieved by use of an identifying particular. The regulations set forth procedures whereby individuals may seek and gain access to records concerning themselves and request amendments of those records. The regulations also set forth requirements applicable to Administration employees maintaining collecting, using or disseminating such records.

(b) The Director of the Office of Administration, with advice from the General Counsel, shall be responsible for training employees of the Administration in the obligations imposed by the Privacy Act of 1974 and these regulations.

§720.21 Definitions.

For purposes of this subpart:

(a) "Administration" means the National Credit Union Administration including the National Credit Union Administration Control Liquidity Facility:

(b) "Board" means the National Credit Union Administration Board;

(c) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(d) "Maintain" includes maintain, collect, use, or disseminate;

(e) "Record" means any item, collection, or grouping of information about an individual that is maintained by the Administration, and that contains his name, or an identifying number, symbol, or other identifying particular assigned to the individual;

(f) "System of records" means a group of any records under the control of the Administration from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(g) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§720.22 Procedures for requests pertaining to individual records in a system of records.

(a) An individual seeking notification of whether a system of records contains a record pertaining to him or an individual seeking access to information or records pertaining to him which is available under the Privacy Act of 1974 shall present his request to the Administration official identified in the access procedure section of the "Notice of Records Systems" published in the FEDERAL REGISTER which describes the system of records to which the individual's request relates. An individual who does not have access to the Federal Register and who is unable to determine the appropriate official to whom his request should be submitted may submit his request to the Director of the Office of Administration, National Credit Union Administration, 1776 G Street, NW, Washington, D.C. 20456, in which case the request will then be referred to the appropriate Administration official(s) and the date of receipt of the request will be determined as the date of receipt by the official(s).

(b) In addition to meeting the identification requirements set forth in §702.23, the individuals seeking notification or access, either in person or by mail, shall describe the nature of the records sought, the approximate dates covered by the record, and the system in which it is thought to be included, as described in the "Notices of Records Systems" published in the FEDERAL REGISTER.

§720.23 Times, Places, and Requirements for Identification of Individuals making Requests and Identification of Records Requested.

(a) The following standards are applicable to any individual who submits a request either in person or by mail under §720.22:

(1) An individual seeking access to records about himself in person shall, if not personally known to the Administration official responding to the request, establish his identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license or credit card);

(2) An individual seeking access to records about himself by mail may establish his identity by a signature, address, date of birth, employee identification number if any, and one other identifier such as a photocopy of driver's license or other document. If less than all of this requisite identifying information is provided, and unless that which is provided is considered sufficient to establish the requestor's identity, in view of the nature of the information requested, the Administration official responding to the request may require further identifying information prior to any notification or responsive disclosure.

(3) An individual seeking access to records about himself by mail or in person who cannot provide the required documentation of identification may provide a notarized statement; swearing or affirming to his identity and to the fact that he understands the penalties for false statements pursuant to 18 U.S.C. 1001.

(b) The parent or guardian of a minor or a person judicially determined to be incompetent shall, in addition to establishing the identity of the minor or other person he represents as required in paragraph (a) of this section, establish his own parentage or guardianship by furnishing a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(c) Individuals may request notification of the existence of and access to records about themselves and contained in a system of records by telephone. In such a case, the Administration official responding to the request shall require, for the purpose of comparison and verification of identity, at least two items of identifying information (such as date of birth, home address, social security number) which are already possessed by the Administration. If the requisite identifying information is not provided, or otherwise at the discretion of the responsible Administration official, the individual may be required to submit his request by mail or in person in accordance with paragraph (a), above.

(d) An individual seeking to review records about himself may be accompanied by another person of his own choosing. In such cases, the individual seeking access shall be required to furnish a written statement authorizing the discussion of that individual's records in the accompanying person's presence.

(e) In addition to the requirements set forth in paragraph (a), (b) and (c) of this section, the published "Notice of System of Records" for individual systems may include further requirements of identification where necessary to retrieve the individual records from the system.

§720.24 Notice of existence of records, access decisions and disclosure of requested information; time limits.

(a) The Administration official identified in the record access procedure section of the "Notice of Records Systems" and identified in accordance with §720.23 (d), by an individual seeking notification of, or access to, a record, shall be responsible to (1) determine whether access is available under the Privacy Act, (3) notify the requesting individual of those determinations, and (4) provide access to information determined to be available. In cases where the Administration Official identified in the above sentence is the Director of the Office of Administration (or Security Officer) he shall designate one or more of his assistants as being responsible for carrying out the requirements of this section. In the case of an individual access request made in person, information determined to be available shall be provided by allowing a personal review of the record or portion of a record containing the information requested and determined to be available, and the individual shall be allowed to have a copy of all or

any portion of available information made in a form comprehensible to him. In the case of an individual access request made by mail, information, determined to be available shall be provided by mail, unless the individual has requested otherwise. If access is denied because of an exemption, the individual shall be notified that he may appeal that determination to the Director of the Office of Administration preferably within 180 days after receipt of the determination. Such appeals shall be determined within thirty days.

(b) The following time limits shall be applicable to the required determinations, notification and provisions of access set forth in paragraph (a) of this section:

(1) Requests concerning a single system of record which do not require consultation with or requisition of records from another agency shall be responded to within 10 working days after receipt of the request;

(2) Requests requiring requisition of records from or consultation with another agency shall be responsded to within 10 working days after such requisition or resolution of the required consultation. Such required requisition or consultation shall be initiated within 10 working days after receipt of the request; and

(3) If a request under paragraph (b)(1) or (2) of this section presents unusual difficulties in determining whether the records involved are exempt from disclosure, the Director of the Office of Administration may, upon written request of the official responsible for action upon the record request, extend the time period established by these regulations for an additional 15 working days.

(c) Nothing in this section shall be construed to allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding or any information exempted from the provisions of 5 U.S.C. 552a (d) pursuant to 5 U.S.C. 552a (j) or (k).

§720.25 Special procedures: Information furnished by other agencies; medical records.

(a) When records or information sought from the Administration include information furnished by other Federal agencies, the Administration official responsible for action on the request shall consult with the appropriate agency prior to making a decision to disclose or refuse the record but the decision whether to disclose the record shall be made in the first instance by the Administrative official.

(b) When an individual requests medical records concerning himself, the Administration official responsible for action on the request may advise the individual that the records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation and upon proper verification of identity, the Administration official shall permit the physician to review the records or to receive copies of the records by mail. The determination of which records should be made available directly to the individual and which records should not be disclosed directly because of possible harm to the individual shall be made by the Administration official responsible for action on the request.

§ 720.26 Requests for correction or amendment to record; administration review of requests.

(a) An individual may request amendment of a record concerning himself by addressing his request, either in person or by mail, to the Administration official identified in the record contest procedure section of the "Notice of Records Systems" published in the FEDERAL REGISTER and describing the system of records which contains the record which the individual wishes to request amendment of. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. In cases where the Administration official described in the above sentence is the Director of the Office of Administration (or Security Officer), he shall designate one of his assistants, such as the Deputy Director of the Office of Administration, as the official responsible for carrying out the requirements of this section. Requests made by mail should be addressed to the responsible Administration official at the address specified in the "Notice of Records System" describing this system of records which contains the contested record. An individual who does not have access to the Administration's 'Notices of Records Systems,'

and to whom the appropriate address is otherwise unavailable may submit his request to the Director of the Office of Administration, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456, in which case the request will then be referred to the appropriate Administration official and the date of receipt of the request will be determined as of the date of receipt by that official.

(b) Within ten working days of receipt of the request, the appropriate Administration official shall advise the individual that his request has been received. The appropriate Administration official shall then promptly, and under normal circumstances, not later than thirty working days after receipt of the request, either advise the individual that the record is to be amended or corrected or inform the individual of his refusal to amend the record, the reason for the refusal, and the procedures established by §720.27 for the individual to request a review of that refusal.

§720.27 Appeal of initial adverse determination on correction or amendment.

(a) A refusal, in whole or in part, to amend or correct a record may be appealed to the Director of the Office of Administration within 30 working days of receipt of notice of the refusal. Appeals shall be in writing, shall set forth the specific item of information sought to be corrected and the documentation justifying the correction. Appeals shall be addressed to the Chairman, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456; attention Director of the Office of Administration. Appeals shall be decided within thirty working days of their receipt unless the Chairman shall, for good cause, shown, extend such period for an additional thirty working days.

(b) Within the time limits set forth in paragraph (a) of this section, the Director of the Office of Administration shall either advise the individual of his decision to amend or correct the record or advise the individual of his determination that an amendment or correction is not warranted on the facts, in which case he shall advise the individual of his right to provide for the record a "Statement of Disagreement" and of his right to judicial review pursuant to the Privacy Act of 1974.

(c) Statements of Disagreement may be furnished by the individual. It is requested that they are furnished within 30 days of the date of receipt of the notice of refusal of the Director of the Office of Administration to authorize correction. They shall be addressed to the Chairman, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456; attention, Director of the Office of Administration. Upon receipt of a statement of disagreement in accordance with this section, the Director of the Office of Administration shall take steps to ensure that the statement is included in the system or systems of records which contain the disputed item and that the original item is so marked to indicate that there is a statement of dispute and where, within the system of records, that statement may be found.

(d) When a record has been amended or corrected or a statement of disagreement has been furnished, the system manager for the system of records which contains the record shall, within thirty days thereof, advise all prior recipients of information to which the amendment or statement of disagreement relates whose identity can be determined by an accounting made as required by the Privacy Act of 1974 or any other accounting previously made, of the amendment or statement of disagreement. When a statement of disagreement has been furnished, the system manager shall also provide any subsequent recipient of a disclosure containing information to which the statement relates with a copy of the statement and note the disputed portion of the information disclosed. A concise statement of the reasons for not making the requested amendments may also be provided if deemed appropriate.

(e) In the case of any appeal made under this section and related to personnel records which the Administration maintains pursuant to specific requirements or authorization by the Office of Personnel Management or pursuant to a record-keeping requirement of the Federal Personnel Manual, the appeal shall be forwarded, after consideration by the Director of the Office of Administration, to the Office of Personnel Management for a final determination, in accordance with Office of Personnel Management regulations.

§720.28 Disclosure of record to person other than the individual to whom it pertains.

No record or item of information concerning an individual which is contained in a system of records maintained by the Administration shall be disclosed by any means of communication to any person, or to another agency without the prior written consent of the individual to whom the record or item of information pertains, unless the disclosure would be—

(a) To an employee of the Administration who has need for the record in the performance of his duties;

(b) Required by the Freedom of Information Act;

(c) For a routine use as described in the "Notice of Records System," published in the FEDERAL REGISTER, which describes the system of records in which the record or item of information is contained;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(e) To a recipient who has provided the Administration with advance adequate written assurance that the record or item will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record or item which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of the General Services Administration or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Administration specifying the particular portion desired and the law enforcement activity for which the record or item is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§720.29 Accounting for disclosures.

(a) Each system manager identified in the "Notice of Records Systems" as published in the FEDERAL REGISTER for each system of records maintained by the Administration, shall establish a system of accounting for all disclosures of information or records concerning individuals and contained in the system of records, made outside the Administration. Accounting procedures may be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, of the persons or agencies to which records concerning them have been disclosed.

(b) Accounting records, at a minimum, shall include the information disclosed, the name and address of the person or agency to whom disclosure was made, and the date of disclosure. When records are transferred to the National Archives and Records Service for storage in records centers, the accounting pertaining to those records shall be transferred with the records themselves.

(c) Any accounting made under this section shall be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

§720.30 Requests for accounting for disclosures.

At the time of his request for access or correction or at any other time, an individual may request an accounting of disclosures made of his

record outside the Administration. Requests for accounting shall be directed to the system manager. Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975, shall be made available to the individual except that an accounting need not be made available if it relates to: (a) A disclosure made pursuant to the Freedom of Information Act, 5 U.S.C. 552; (b) a disclosure made within the Administration; (c) a disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a (b) (7); (d) a disclosure which has been exempted from the provisions of 5 U.S.C. 552a (c) (3) pursuant to 5 U.S.C. 552a (j) or (k).

§720.31 Emergency disclosures.

If the information concerning an individual and contained in a system of records has been disclosed to any person under compelling circumstances affecting health or safety, the individual shall be notified at his last known address within 5 days of the disclosure. Notification shall include the following information: the nature of the information disclosed, the date of the disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure.

§720.32 Collection of information from individuals; information forms.

(a) The system manager, as identified in the "Notice of Records Systems" published in the FEDERAL REGISTER for each system of records maintained by the Administration, shall be responsible for reviewing all forms developed and used to collect information from or about individuals for incorporation into the system of records.

(b) The purpose of the review shall be to eliminate any requirement for information that is not relevant and necessary to carry out an Administration function and to accomplish the following objectives:

(1) To ensure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of other First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or is pertinent to and within the scope of any authorized law enforcement activity;

(2) To ensure that the form or accompanying statement makes clear to the individual which information he is required by law to disclose and the authority for that requirement and which information is voluntary;

(3) To ensure that the form or accompanying statement states clearly the principal purpose or purposes for which the information is being collected, and states concisely the routine uses that will be made of the information;

(4) To ensure that the form or accompanying statement clearly indicates to the individual the effect in terms of rights, benefits or privileges of not providing all or part of the requested information; and

(5) To ensure that any form requesting disclosure of a Social Security Number, or an accompanying statement, clearly advises the individual of the statute or regulation requiring disclosure of the number or clearly advises the individual that disclosure is voluntary and that no consequence will flow from his refusal to disclose it, and the uses that will be made of the number whether disclosed mandatorily or voluntarily.

(c) Any form which does not meet the objectives specified in the Privacy Act and this section, shall be revised to conform thereto. If revision, printing and distribution cannot be accomplished prior to September 27, 1975, a separate statement shall be prepared to accompany each form advising the individual that the form is not in compliance with the Privacy Act and specifying the portions thereof which are not in compliance. The statement shall include all the information necessary to accomplish the objectives specified in the Privacy Act and this section.

§720.33 Contracting for the operating of a system of records.

(a) No component of the Administration shall contract for the operation of a record system by or on behalf of the agency without the express approval of the Board.

(b) Any contract which is approved shall contain the standard contract requirements pro-

mulgated by the General Services Administration to ensure compliance with the requirements imposed by the Privacy Act of 1974. The contracting component shall have the responsibility for ensuring that the contractor complies with the contract requirements relating to privacy.

§720.34 Fees.

(a) Fees pursuant to 5 U.S.C. 552a (f)(5) shall be assessed for actual copies of records provided to individuals on the following basis, unless the Administration official determining access waives the fee because of the inability of the individual to pay or the cost of collecting the fee:

(1) For actual copies of documents, $0.10 per page; and

(2) For copying information, if any, maintained in uncommon or nondocument form, the direct cost to the Administration may be assessed but only if the individual has been notified of the cost before it is incurred.

(b) If it is determined that access fees chargeable under this section will amount to more than $25, and the individual has not indicated in advance his willingness to pay fees as high as are anticipated, the individual shall be notified of the amount of the anticipated fees before copies are made, and the individual's access request shall not be considered to have been received until receipt by the Administration of his written agreement to pay.

§720.35 Exemptions.

(a) The Administration maintains three systems of records which are exempted from some of the provisions of the Privacy Act of 1974. In paragraphs (b) and (c) of this section, those systems of records are identified (by System Name and System Number as stated in the Administration's "Notice of Systems of Records," published in the FEDERAL REGISTER) and the provisions from which each system is exempted and the reasons therefor are set forth.

(b) System NCUA-2, entitled "Federal Employee Security Investigations Containing Adverse Information," consists of adverse information about Administration employees which has been obtained as a result of routine Office of Personnel Management security investigations. System NCUA-17, entitled "Security Clearance Records Concerning NCUA Personnel Who Occupy Critical Sensitive Positions," consists of records obtained as a result of investigations conducted by the Office of Personnel Management and/or the Federal Bureau of Investigation to determine qualifications of NCUA officials for security clearances. To the extent that the Administration maintains records in either of these systems pursuant to Office of Personnel Management guidelines which require or may require retrieval of information by use of individual identifiers, those records are encompassed by and included in the Office of Personnel Management Government Wide System of Records Number 4, entitled "Personnel Investigations Records," and thus are subject to the applicable specific exemptions promulgated by the Office of Personnel Management at 5 C.F.R. 297.117. Additionally, in order to ensure the protection of properly confidential sources, particularly as to those records which are not maintained pursuant to such Office of Personnel Management requirements, the records in these systems of records are exempted, pursuant to section k(5) of the Act (5 U.S.C. 552a(k) (5)), from section (d) of the Act (5 U.S.C. 552a (d)). As a result, to the extent that disclosure of a record would reveal the identity of a confidential source the Administration need not grant access to that record by its subject. Information which would reveal a confidential source shall, however, whenever possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(c) System NCUA-4, entitled "Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act," consists of a limited number of records about individuals suspected of involvement in felonies or infractions under the Federal Credit Union Act (12 U.S.C. 1751, et seq.). These records are maintained in an overall context of general investigative information concerning crimes against credit unions, the bulk of which does not pertain to and is not identifiable to individual persons. To the extent that individually identifiable information is maintained, however, for purposes of protecting the security of any investigations by appropriate law enforcement

authorities and promoting the successful prosecution of all actual criminal activity, the records in this system are exempted, pursuant to section k(2) of the Act (5 U.S.C. 552a (k) (2)), from sections (c) (3), (d)). As a result, the Administration need not make an accounting of previous disclosures of a record in this system of records available to its subject, and the Administration need not grant access to any records in this system of records by their subject. Further, whenever an individual requests records about himself and maintained in this system of records, the Administration shall, to the extent necessary to realize the above stated purposes, neither confirm nor deny the existence of that record but shall advise the individual only that no record available to him pursuant to the Privacy Act of 1974 has been identified. However, should a review of the information reveal that it has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under Federal law, the individual shall be advised of the existence of the information and shall be provided the information except to the extent it would identify a confidential source. Information which would identify a confidential source shall, if possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(d) For the purposes of this section, a "confidential source" means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

§720.36 Security of systems of records.

(a) Each system manager, with the approval of the head of his Office, shall establish administrative, and physical controls, consistent with Administrative regulations, to insure the protection of records systems from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records but at a minimum must insure that records are enclosed in a manner to protect them from public view, that the area in which the records are stored is supervised during all business hours to prevent unauthorized personnel from entering the area or obtaining access to the records, and that the records are inaccessible outside of business hours. Automated systems shall comply with the security standards promulgated by the National Bureau of Standards.

(b) Each system manager, with the approval of the head of his Office, shall adopt access restrictions to insure that only those individuals within the agency who have a need to have access to the records for the performance of their duties have access to them. Procedures shall also be adopted to prevent accidental access to or dissemination of records.

§720.37 Use and collection of Social Security numbers.

The head of each office of the Administration (e.g., Office Director, Regional Director, President of the Control Liquidity Facility) shall take such measures as are necessary to ensure that employees authorized to collect information from individuals are advised that individuals may not be required to furnish Social Security numbers without statutory or regulatory authorization and that individuals who are requested to provide Social Security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

§720.38 Employee standards of conduct with regard to privacy.

(a) The head of each office of the Administration shall be responsible for assuring that employees subject to his supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil

liabilities provided therein, and that such employees are made aware of their responsibilities to protect the security or personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no information system concerning individuals, no matter how small or specialized, is maintained without public notice.

(b) With respect to each system of records maintained by the Administration, employees of the Administration shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the Administration;

(2) Collect from individuals only that information which is necessary to Administration functions or responsibilities;

(3) Collect information, wherever possible, directly from the individual to whom it relates;

(4) Inform individuals from whom information is collected of the authority for collection, the purposes thereof, the routine uses that will be made of the information, and the effects, both legal and practical of not furnishing the information;

(5) Neither collect, maintain, use or disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless (i) the individual has volunteered such information for his own benefit; (ii) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (iii) the activities involved are pertinent to and with the scope of an authorized investigation or adjudication.

(6) Advise their supervisors of the existence or contemplated development of any record system which retrieves information about individuals by individual identifier.

(7) Maintain an accounting, in the prescribed form, of all dissemination of personal information outside the Administration, whether made orally or in writing;

(8) Disseminate no information concerning individuals outside the Administration except when authorized by 5 U.S.C. 552a or pursuant to a routine use as set forth in the routine use section of the "Notice of Records Systems" published in the FEDERAL REGISTER.

(9) Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made either within or without the Administration; and

(10) Call to the attention of the proper Administration authorities any information in a system maintained by the Administration which is not authorized to be maintained under the provisions of the Privacy Act of 1974, including information on First Amendment activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individuals concerned.

(c) Heads of offices within the Administration shall, at least annually, review the record systems subject to their supervision to ensure compliance with the provisions of the Privacy Act of 1974.

Subpart C—Public Observation of Board Meetings Under 5 U.S.C. 552b.

§720.40 Scope and Purpose.

(a) This subpart contains the regulations of the National Credit Union Administration implementing subsections (b) through (f) of 5 U.S.C. §552b as required by the Sunshine Act, P.L. 94-409. The primary purpose of these regulations will be to provide the public with the fullest access, authorized by law, to the deliberations and decisions of the Board while protecting the rights of individuals and preserving the ability of the agency to carry out its responsibilities.

§720.41 Definitions.

For the purpose of this subpart:

(a) "agency" means the National Credit Union Administration.

(b) "Board" means the National Credit Union Administration Board, whose members were appointed by the President with the advice and consent of the Senate.

(c) "subdivision of the Board" means a group composed of two Board members authorized by the Board to act on behalf of the agency.

(d) "meeting" means any deliberations by two or more members of the Board or any subdivision of the Board that determine or result in the joint conduct or disposition of official agency business with the exception of: (1) deliberations to determine whether a meeting or a portion thereof will be open or closed to public observation and whether information regarding closed meetings will be withheld from public disclosure; (2) deliberations to determine whether or when to schedule a meeting; and (3) infrequent dispositions of official agency business by sequential circulation of written recommendations to individual Board members ("notation voting procedure"), provided the votes of each Board member and the action taken are recorded for each matter and are publicly available, unless exempted from disclosure pursuant to 5 U.S.C. §552 (the Freedom of Information Act).

(e) "public observation" means that a member or group of the public may listen to and observe any open meeting and may record in an unobtrusive manner any portion of that meeting by use of a camera or any other electronic device, but shall not participate in any meeting unless authorized by the Board.

(f) "public announcement" or "publicly announce" means making reasonable efforts under the particular circumstances to fully inform the public, especially those individuals who have expressed interest in the subject matters to be discussed or the decisions of the agency.

(g) "Sunshine Act" means the open meeting provisions of the "Government in the Sunshine Act", Public Law 94-409, 5 U.S.C. §§552b (b) to (f).

§720.42 Open Meetings.

Except as provided in Section 720.43(a), any portion of any meeting of the Board shall be open to public observation. The Board and any subdivision of the Board, shall jointly conduct official agency business agency business only in accordance with this subpart.

§720.43 Exemptions.

(a) Under the procedures specified in Section 720.45, the Board may close a meeting or any portion of a meeting from public observation or may withhold information pertaining to such meetings as otherwise required to be disclosed, provided, the Board has properly determined that the public interest does not require otherwise and that the meeting (or any portion thereof) or the disclosure of meeting information is likely to:

(1) disclose matters that are (i) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy, and (ii) in fact properly classified pursuant to such Executive Order;

(2) relate solely to internal personnel rules and practices;

(3) disclose matters specifically exempted from disclosure by statute (other than Section 552 of Title 5 of the United States Code, the Freedom of Information Act), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particluar types of matters to be withheld;

(4) disclose trade secrets and commerical or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personnel nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of Federal agencies responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would (i) be likely to (A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution, or (ii) be likely to significantly frustrate implementation of a proposed action, except that this subparagraph shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) specifically concern the issuance of a subpena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition of a particular case of formal agency adjudication pursuant to the procedures in Section 554 of Title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

(b) Prior to closing a meeting whose discussions are likely to fall within the exemptions listed in paragraph (a) of this section, the Board will balance the public interest in observing the deliberations of an exemptible matter and the agency need for confidentiality of the exemptible matter. In weighing these interests, the Board is assisted by the General Counsel as provided in Section 720.47, by expressions of the public interest set forth in requests for open meetings as provided by Section 727.46(b), and by the brief staff analysis of public interest which will accompany each staff recommendation that an agenda item be considered in a closed meeting.

§Section 720.44 Public Announcement of Meetings.

(a) Execpt as otherwise provided in this section the Board shall, for each meeting, make a public announcement, at least one week in advance of the meeting, of the time, place and subject matter of the meeting, whether it will be open or closed to public observation and the name and telephone number of the Secretary of the Board or the person designated by the Board to respond to requests for information about the meeting.

(b) Advance notice is required unless a majority of the members of the Board determine by a recorded vote that agency business requires that a meeting be called at an earlier date, in which case, the information to be announced in paragraph (a) of this section shall be publicly announced at the earliest practicable time.

(c) A change, including a postponement or a cancellation, in the time or place of a meeting after a published announcement may be made only if announced at the earliest practicable time.

(d) A change in or deletion of the subject matter of a meeting or any portion of a meeting or a redetermination to open or close a meeting or any portion of a meeting after a published announcement may be made only if (1) a majority of the Board determines by recorded vote that agency business so requires and that no earlier announcement of the change was possible and (2) public announcement of the change and of the vote of each member on such change shall be made at the earliest practicable time.

(e) Each meeting announcement or amendment thereof shall be posted on the Public Notice Bulletin Board in the reception area of the agency headquarters and may be made available by other means deemed desirable by the Board. Immediately following each public announcement requried by this section, the stated information shall be submitted to the FEDERAL REGISTER for publication.

(f) No announcement shall contain information which is determined to be exempt from disclosure under Section 720.43(a).

(g) The agency shall maintain a mailing list of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation and amendments to such announcements. Requests to be placed on the mailing list should be made by telephoning or by writing to the Secretary of the Board.

§720.45 Regular Procedure for Closing Meeting Discussions or Limiting the Disclosure of Information.

(a) A decision to close any portion of a meeting and to withhold information about any portion of a meeting closed pursuant to Section 720.43(a) will be taken only when a majority of the entire Board votes to take such action. In deciding whether to close a meeting or any portion of a meeting or to withhold information, the Board shall independently consider whether the public interest requires an open meeting. A separate vote of the Board will be taken and recorded for each portion of a meeting to be closed to public observation pursuant to Section 720.43(a) or to withhold information from the public pursuant to Section 720.43(a). A single vote may be taken and recorded with respect to a series of meetings, or any portions of meetings which are proposed to be closed to the public, or with respect to any information concerning the series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. No proxies shall be allowed.

(b) Any person whose interests may be directly affected by any portion of a meeting for any of the reasons stated in subparagraph (5), (6) or (7) of Section 720.43(a), may request that the Board close such portion of the meeting. After receiving notice of a person's desire for any specified portion of a meeting to be closed, the Board, upon a request by one member, will decide by recorded vote whether to close the relevant portion or portions of the meeting. This procedure applies to requests received either prior or subsequent to the announcement of a decision to hold an open meeting.

(c) Within one day after any vote is taken pursuant to paragraph (a) or (b) of this section, the Board shall make publicly available a written copy of the vote taken indicating the vote of each Board member. Except to the extent that such information is withheld and exempt from disclosure, for each meeting or any portion of a meeting closed to the public, the Board shall make publicly available within one day after the required vote, a written explanation of its action, together with a list of all persons expected to attend the closed meeting and their affiliation. The list of persons to attend need not include the names of individual staff, but shall state the offices of the agency expected to participate in the meeting discussions.

§720.46 Requests for Open Meeting.

(a) Following any announcement that the Board intends to close a meeting or any portion of any meeting, any person may make a written or telegraphic request to the Secretary of the Board that the meeting or a portion of the meeting be open. The request shall be circulated to the members of the Board, and the Board, upon the request of one member, shall reconsider its action under Section 720.45 before the meeting or before discussion of the matter at the meeting. If the Board decides to open a portion of a meeting proposed to be closed, the Board

shall publicly announce its decision in accordance with Section 720.44(e). If no request is received from a Board member to reconsider the decision to close a meeting or portion thereof prior to the meeting discussion, the Chairman of the Board shall certify that the Board did not request reconsideration of its decision to close the discussion of the matter.

(b) The request to open a portion of a meeting shall be submitted to the Secretary of the Board in advance of the meeting in question. The request shall set forth the requestor's interest in the matter to be discussed and the reasons why the requestor believes that the public interest requires that the meeting or portions thereof be open to public observation.

(c) The submission of a request to open a portion of a meeting shall not act to stay the effectiveness of Board action or to postpone or delay the meeting unless the Board decides otherwise.

(d) The Secretary of the Board shall advise the requestor of the Board's consideration of the request to open a portion of the meeting as soon as practicable.

720.47 General Counsel Certification.

For each meeting or any portion of a meeting closed to public observation under Section 720.45, the General Counsel shall publicly certify, whether in his or her opinion, the meeting or portion thereof may be closed to public observation and shall state each relevant exemptive provision of law. A copy of the certification together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained as a part of the permanent meeting records. As part of the certification, the General Counsel shall recommend to the Board whether the public interest requires that the meeting or portions thereof proposed to be closed to public observation be held in the open.

§720.48 Maintenance of Meeting Records.

(a) Execpt in those circumstances which are beyond the control of the agency, the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or any portion thereof, closed to public observation. However, for meetings closed under subparagraph (8), (9)(A)(i), or (10) of Section 720.43(a), the Board shall maintain either a transcript, a recording or a set of minutes. The Board shall maintain a complete electronic recording for each open meeting or any portion thereof. All records shall clearly identify each speaker.

(b) A set of minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons for taking such action. Minutes shall also include a description of each of the views expressed by each person in attendance on any item and the record of any roll call vote, reflecting the vote of each member. All documents considered in connection with any action shall be identified in the minutes.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes or a complete electronic recording of each meeting or any portion of a meeting, closed to public observation, for at least two years after such meeting or until one year after the conclusion of any agency proceeding with respect to which the meeting or any portion was held, whichever occurs later. The agency shall maintain a complete electronic recording of each open meeting for at least three months after the meeting date. A complete set of minutes shall be maintained on a permanent basis for all meetings.

§720.49 Public Availabiltiy of Meeting Records and Other Documents.

(a) The agency shall make promptly available to the public, in the Public Reference Room, the transcript, electronic recording or minutes of any meeting, deleting any agenda item or any item of the testimony of a witness received at a closed meeting which the Board determined, pursuant to paragraph (c) of this section, was exempt from disclosure under Section 720.43(a). The exemption or exemptions relied upon for any deleted information shall be reflected on any record or recording.

(b) Copies of any transcript, minutes or transcription of a recording, disclosing the identity of each speaker, shall be furnished to any person requesting such information in the form specified in paragraph (a) of this section. Copies shall be furnished at the actual cost of duplication or transcription unless waived by the Secretary of the Board.

(c) Following each meeting or any portion of a meeting closed pursuant to Section 720.43(a), as the last item of business, the Board shall determine which, if any, portions of the meeting transcript, electronic recording or minutes not otherwise available under 5 U.S.C. §522a (Privacy Act), contain information which should be withheld pursuant to Section 720.43(a); provided, however, that should the Board not make such determinations immediately following any such closed meeting, the Secretary of the Board, upon the advice of the General Counsel or the General Counsel's designee and after consulting with the Board, shall make such determinations. If at a later time, the Board determines that there is no further justification for withholding any meeting record or other item of information from the public which has previously been withheld, then such information shall be made available to the public.

(d) Except for information determined by the Board to be exempt from disclosure pursuant to paragraph (c) of this section, meeting records shall be promptly available to the public in the Public Reference Room. Meeting records include but are not limited to: the transcript, electronic recording or minutes of each meeting, as required by Section 720.48(a); the notice of requirements of Section 720.44 and 720.45(c); and the General Counsel Certification along with the presiding officer's statement, as required by Section 720.47.

(e) These provisions do not affect the procedures set forth in Section 720, Subpart A governing the inspection and copying of agency records, except that the exemptions set forth in Section 720.43(a) of this subpart and in 5 U.S.C. §552b(c) shall govern in the case of a request made pursuant to Part 720, Subpart A to copy or inspect the meeting records described in this section. Any documents considered or mentioned at Board meetings may be obtained subject to the procedures set forth in Part 720, Subpart A.

APPENDIX I

Final Report In Response to Executive Order No. 12044:

Improving Government Regulations.

Overview. On March 23, 1978, President Carter issued Executive Order 12044 (the Executive Order) directing that each executive agency adopt procedures to improve existing and future regulations (see 43 FR 12661). On May 31, 1978, NCUA published and invited public comment on its draft report implementing the Executive Order (43 FR 23688). Having reviewed the comments received, and having received the approval of the Office of Management and Budget, NCUA now issues this Final Report.

The Report is organized in six parts. Part I describes the scope and coverage of the Report. Part II defines key terms used throughout the Report. The remaining parts set forth NCUA's procedures for improving its regulation: Part III describes the Semi-Annual Agenda of regulations under review by NCUA that will be published in the Federal Register. Part IV describes the way in which the public can participate in the development of NCUA's regulations. Part V describes the procedure NCUA will use in developing a regulation. Part VI sets forth NCUA's plan for periodically reviewing existing regulations.

I. EXPLANATION AND STATEMENT OF COVERAGE

This report describes the methods and procedures that NCUA will use to establish new regulations and to change existing regulations. It covers the process from the time NCUA receives a suggestion to change its regulations (either from a member of the public, from another State or Federal agency, from within NCUA, or from a change in the law resulting from an Act of Congress) through the decision to issue a proposed regulation, the development of a proposed regulation, the consideration of public comments on the proposal, the issuance of a final regulation, if any, and, finally, the review of that regulations every few years to determine its continued need and effectiveness. The goals of these procedures are to ensure that the regulations are clear and understandable and that they effectively carry out the requirements of the law while imposing only the minimum necessary burdens on the public. To achieve these goals, the procedures are designed to increase the opportunity for the public to participate in changing the regulations, to create standards to measure how a change will affect credit unions and others subject to the regulations, and to make sure that the Board of NCUA has reviewed all the options before deciding on a final change to a regulation. In some cases, these procedures may, however, be inappropriate either because of factors outside of NCUA's control or because following the procedures is determined not to be in the public interest. Therefore, NCUA will not apply the procedures contained in this report in the development of:

1. Regulations that are required by statute to be developed on the record after oral hearings before the Administration;

2. Regulations that are prepared in response to an emergency or that a statute or a court requires to be developed under a short deadline;

3. Regulations where the process would be unnecessary or contrary to the public interest; and

4. Matters that relate to the management of NCUA, its personnel, and its procurement of goods and services.

In the event that one of these exemptions is used and the procedures outlined in this report are not followed, NCUA will notify the public, explain the reasons for not following the procedures and give the name of the official who was responsible for making that decision.

II. DEFINITIONS

The following words and phrases have been used throughout the report:

1. Initiation statement—a written statement that identifies an issue or a subject and that suggests and supports the need for a change to NCUA's regulations on that issue or subject.

2. Office of primary interest—an office within NCUA that will develop and draft a regulation, with assistance from, and review by, other offices.

3. Regulation—an agency rule of general applicability that has the force and effect of law and that has been adopted in accordance with the requirements of 5 USC Section 553.

4. Regulatory analysis—a written statement that sets forth: (a) the problem to be addressed by a proposed regulation and possible consequences of the problem; (b) a description of the major alternatives for dealing with the problem and the economic and competitive consequences of each alternative; and (c) an explanation of the reasons for choosing one alternative over the others.

5. Regulatory Development Coordinator—an individual in NCUA's Office of General Counsel responsible for: (a) coordinating the rulemaking process; (b) reviewing the issues raised by initiation statements and maintaining a record of the development of those issues; (c) preparation and publication in the Federal Register of the semi-annual agenda of significant regulations being developed by NCUA and existing regulations being reviewed by NCUA; and (d) review and approval of proposed and final regulations to ensure compliance with the requirements of the Administrative Procedures Act and the requirements of this report.

6. Significant regulation—any regulation, other than one that merely updates or clarifies existing regulations without affecting their substantive meaning or the burdens placed on those subject to the regulation.

III. SEMI-ANNUAL AGENDA

Twice a year, NCUA will publish in the Federal Register an agenda listing the significant regulations and regulations of public interest being considered and/or developed by NCUA and also listing those existing regulations undergoing periodic review. A notice will be published in the Federal Register on the first Monday in October of each year announcing the dates that the agenda will be published.

1. Contents of the agenda. The agenda will, for each regulation listed in it, contain the following information: (a) a brief description of the regulation; (b) the need for the regulation and the legal basis for issuing it; (c) the status of the regulation, that is, the stage of development that it is in at the time the agenda is published; (d) the name and telephone number of an NCUA official who is familiar with the regulation; and (e) whether a regulatory analysis will be required for the regulation.

2. Development of the agenda. The Regulatory Development Coordinator will be responsible for compiling, maintaining, and updating a listing of regulations that will be used for the agenda. When an initiation statement and recommendations for action are sent by an office through the Regulatory Development Coordinator to the Board for authorization to develop a regulation, the subject will be included in the list. If the Board authorizes the development of a regulation and assigns it to the office of primary interest, that office will notify the Regulatory Development Coordinator, who will then update the list. As each stage of development of the regulation is

entered, the Regulatory Development Coordinator will be notified by the office of primary interest so that the list may be updated. Members of the public wanting to know the status of a regulation under development or review may call the Regulatory Development Coordinator, who will be able to advise them by consulting the list, of the status and the agency official to contact for further information. In this way the list, which is the basis for the published agenda, will be used as a method for both the agency and the public to keep track of the development of the regulation, and for the Regulatory Development Coordinator to ensure that all the required steps in the process are being taken.

3. Publication of the agenda. Prior to the date announced for publication of the agenda, the Regulatory Development Coordinator will send each NCUA office a copy of the list and will request that the office advise of any needed corrections. The Regulatory Development Coordinator will then compile a current agenda which the Board will approve before it is published in the Federal Register.

IV. OPPORTUNITY FOR PUBLIC PARTICIPATION

This part describes the methods provided by NCUA in the development of its regulations.

1. Initiating a regulation. A member of the public may recommend that NCUA develop a regulation by submitting an initiation statement. NCUA requests, but does not require, that the initiation statement contain the following information:

a. a statement of the issues;

b. the opinion and recommendations of the person submitting the statement;

c. any data that is relevant to the issues;

d. an indication of the support of others for the recommendations; and

e. a description of the interest that the person has in the action requested.

NCUA also suggests, in order to avoid having one NCUA office duplicate the efforts of another, that initiation statements be sent to the Regulatory Development Coordinator (whose name and address appear at the beginning of this report). The person submitting an initiation statement will be advised if NCUA is presently considering a regulation on the subject, in which case the initiation statement will be included in the consideration and development of that regulation. If NCUA is not presently developing or reviewing a regulation on the subject, the person submitting the initiation statement will be advised of the Board's decision on whether to develop a proposed regulation.

2. Solicitation of public participation. A number of methods will be used by NCUA to encourage public participation in the development and review of regulations. The methods used will depend upon the stage of the development or review process, the issues involved, the amount of expressed interest, and the public sector affected by the regulation.

a. The Semi-Annual Agenda. The agenda, which is described in detail in Part III, will advise the public on the status of regulations being developed and the name of an NCUA official to contact.

b. Advance notice of proposed rulemaking. This notice, when the Board determines it is appropriate, will be published in the Federal Register after the Board has authorized the development of a regulation. It will set forth the issues involved in the regulation being developed, briefly describe some of the options being considered and the restrictions that the law imposes, and will ask the public to send written comments to an NCUA official named in the notice.

c. Questionnaires. When the office of primary interest determines that it does not have sufficient data to proceed with the development of a regulation, it will send out questionnaires to parties likely to be affected by the regulation, especially to Federal credit unions. The information obtained from the questionnaires should enable NCUA to decide whether there is a need for a regulation and the most efficient and effective means for dealing with the subject of the regulation.

d. Articles. NCUA will publish articles in its own publications, and will on occasion contribute articles to interested trade publications. These articles will discuss regulations being developed and will include the name of an NCUA official to whom comments can be sent. Also, NCUA will publish copies of proposed and final regulations.

e. Advance copies of proposed regulations. Advance copies of significant proposed regulations will be sent to persons identified on NCUA's regulation mailing list at the time a copy is sent to the Federal Register for publication. To be included on the mailing list, persons should write to the Assistant Director Office of Administration. In this way, persons who have expressed an interest in the development of a regulation, but who do not have regular access to the Federal Register, will be assured of receiving a copy of a proposed regulation with sufficient time to comment prior to the close of the official or formal comment period.

f. Public comment. NCUA will continue to solicit public comment on proposed regulations as required by the Administrative Procedures Act, 5 USC Section 553. As a matter of policy, NCUA believes that the public should be given at least 60 days (from the date of publication in the Federal Register) to comment on a proposed significant regulation. If the comment period is less than 60 days, or is extended beyond 60 days, NCUA will publish a statement in the Federal Register (usually along with the publication of the proposed regulation) explaining the reasons for the change. NCUA will consider, during the comment period, any request to extend the comment period.

g. Public hearings or conferences. If NCUA determines that the written comments that it has received do not provide sufficient information or do not adequately represent significantly varying public interests, public hearings or conferences will be held. Depending upon the nature of the issues involved and the interest expressed by the written comments received, these public meetings will vary from informal conferences, between NCUA officials and interested members of the public at which the issues are discussed, to hearings at which oral testimony is recorded and written testimony may be submitted. NCUA will also consider, where appropriate, holding hearings or conferences at each NCUA Regional Office around the country as well as at the Central Office in Washington, D.C.

h. Procedures for consulting State and local government officials. When it appears that a regulation under development will have a significant impact on relations between NCUA and State government or between NCUA and the government of a particular locality, NCUA will send to the appropriate government official an advance notice of the development of a regulation or an advance copy of the proposed regulation being developed. This will ensure that affected State and local governments have an opportunity to submit their views.

V. PROCEDURES FOR THE DEVELOPMENT OF REGULATIONS

This part of the report describes the procedures for developing a regulation, from the initial suggestion through the publication of the final regulation.

1. Initiating a regulation. This section describes the process whereby a suggestion for a change in NCUA's regulations is initially reviewed and then authorized by the Board for development into a regulation.

a. Potential sources. NCUA receives, and will act on, information relating to needed regulations or changes in existing regulations from the public, State and Federal regulatory agencies, Congressional legislation, Presidential requests, and the various offices within the Administration.

b. Preliminary review. Upon receiving an initiation statement or other information relating to the need for a change in NCUA's regulation, the following action will be taken: (i) The Regulatory Development Coordinator will be advised and will determine whether the issues presented are under development. If so, the Regulatory Development Coordinator will forward the initiation statement to the appropriate office. If not, the office receiving the initiation statement or other information may conduct the preliminary review or suggest that another office do so; (ii) The office conducting the preliminary review will make recommendations as to the action to be taken, the office to be designated as the office of primary interest if further development is approved, alternative approaches to be explored, plans for obtaining public comment, and anticipated target dates. This information, along with the initiation statement, will be reviewed by the Regulatory Development Coordinator and then forwarded to the Board; (iii) The Board will approve or disapprove any further development of a regulation and will designate the office of primary interest. The office of primary interest will advise the party that submitted the suggestion and the Regulatory Development Coordinator that the regulation has been approved for development and will also provide the name of an NCUA official in that office who can be contacted with any further inquiries. If the Board does not approve further development, the office that prepared the preliminary review will advise the source of the suggestion and the Regulatory Development Coordinator of that fact.

2. Preparation of the proposed regulation. This section describes the procedures that NCUA will use from the time that the Board authorizes the development of a regulation to the time a proposed regulation is published in the Federal Register. The office of primary interest will be responsible for preparing the proposed regulation and for seeing that the tasks set forth below are carried out. The office of primary interest will advise the Regulatory Development Coordinator as each task is begun and then completed.

a. Coordination with other NCUA offices. Offices other than the office of primary interest that have operations or responsibilities that will be directly effected by the regulation under development will be included in the development of the regulation. The participation of these offices will include consultation during the consideration of the problem and review of the drafts of the proposed regulation and regulatory analysis.

b. Solicitation of public opinion. The office of primary interest, in consultation with the Regulatory Development Coordinator, will decide on a plan to be used to ensure public participation in the development of the regulation (the alternative methods available are described in detail in Part IV). A decision on whether to issue an advance notice of proposed rulemaking will be made shortly after the office of primary interest receives the Board's authorization to develop the regulation. A file of all comments and suggestions relating to the regulation under development will be maintained in the office of primary interest. The Regulatory Development Coordinator will be given the name of an NCUA official in the office of primary interest who will be available to respond to inquiries from the public.

c. Preparation of a draft regulatory analysis. The office of primary interest will prepare a regulatory analysis, prior to drafting the proposed regulation, whenever it is determined that a significant regulation to be developed will result in: (i) an annual effect on the

economy of $100 million or more; or (ii) a major increase in costs or expenses for all, or a significant portion of, Federal or federally insured credit unions with assets under $1 million (which includes half of all Federal credit unions who are least able to absorb the increase) or for other financial institutions. Although required only in the development of significant regulations meeting this test, the Board, when authorizing the development of a regulation, may direct a regulatory analysis be performed for any proposed regulation. The regulatory analysis will be used to aid in the preparation of the proposed regulation.

d. Preparation for publication of the proposed regulation. The draft of the proposed regulation, along with copies of the regulatory analysis and any public comment received at this point, will be sent to the other interested offices within NCUA for comment. The office of primary interest will then prepare a final version of the proposed regulation, which will include, in the preamble, a brief discussion of the regulatory approach and a statement indicating, if a draft regulatory analysis was prepared, that it is available for public comment. Significant proposed regulations will normally have a public comment period of at least 60 days from the date of publication in the Federal Register. If a shorter or longer comment period is provided, a statement of the reasons will be included in the preamble to the proposed regulation. The final version of the proposed rule will be reviewed by the Office of Geneal Counsel for legal sufficiency and by the Regulatory Development Coordinator for compliance with the requirements of the Administrative Procedures Act and this report. It will then be submitted to the Board for final approval. The proposed regulation will then be sent to the Federal Register for publication and advance copies will be sent to persons identified on the NCUA regulations mailing list.

3. Preparation of the final Regulation. This section of the report will describe what happens from the time that the proposed regulation is published in the Federal Register to the time that the final regulation is published.

a. Public participation. During the public comment period, the office of primary interest and the Regulatory Development Coordinator will review the plans established to ensure public participation and will recommend any needed or desirable changes to the Board. Requests for an extension of the comment period will be considered. A public conference or hearing, if not already called for, will be considered. The final decision on any recommendation to change the plans for obtaining public participation will be made by the Board.

b. Drafting the final regulation. After the public comment period has ended and the other adopted methods of public participation have been completed the office of primary interest will review all information received. The office of primary interest will then prepare a draft of the final regulation. The office of primary interest will also prepare a memorandum to the Board establishing that the following issues have been considered: (i) the need for the regulation; (ii) the alternative approaches to achieving the purpose of the regulation; (iii) the least burdensome of the acceptable approaches was chosen; (iv) the potential effects of the regulation, including an estimate of the reporting burdens and recordkeeping requirements, have been adequately assessed; (v) the public comments received were considered and adequately responded to; (vi) the regulation is written as clearly and simply as possible and will be understandable to those who must comply with it; and (vii) the name, address, and telephone number of a knowledgeable staff person has been provided for further inquiries from the public. If a regulatory analysis was prepared for the proposed regulation, it will be revised to reflect NCUA's response to the public comments received, and the public notice of the final regulation will indicate that a revised analysis is available to the public. The office of primary interest, in consultation with the Office of Policy Analysis, will draft a plan for evaluating the effect of the regulation. The drafts of the final regulation, the memorandum, the revised regulatory analysis, and the plan for evaluation will be sent to the other NCUA offices for comment. The office of primary interest will then prepare the final version of these documents in response to the comments received.

c. Approval and publication of the final regulation. The final version of the regulation, the memorandum, the revised regulatory analysis, and the plan for evaluation will be reviewed by the Office of General Counsel to ensure that the substance of the regulation complies with applicable laws. The Regulatory Development Coordinator will review these documents for compliance with the requirements of Administrative Procedures Act and this report. The Board will review these documents and approve the final regulation. Final regulations will be published in the Federal Register and will become effective 30 days after publication (unless NCUA finds good cause for shortening or lengthening the time and explains this in the publication of the final regulation).

VI. REVIEW OF EXISTING REGULATIONS

This part of the report sets forth NCUA's plans for periodically reviewing its regulations. The purpose of these reviews will be to update, clarify, and simplify existing regulations, and to eliminate redundant and unnecessary provisions.

1. Initial plan for review. After the publication of this final report, the Regulatory Development Coordinator will begin the review of existing regulations by meeting with, and coordinating the plans of, the NCUA offices with primary interest in the regulations listed below. The priority of review is reflected by the order of the list:

a. manuals incorporated by reference into NCUA's Rules and Regulations in Sections 701.2 and 701.14;

b. rules related to the organization, operation, investments, and incidental powers of Federal credit unions in Parts 701, 703, and 721 of NCUA's Rules and Regulations;

c. rules related to Federal share insurance in Parts 740, 741, 745, 746, 748, and 749; and

d. rules relating to administrative procedures in Parts 715, 720, 735, 747, and 750.

2. Future Review. After the effective date of the review of the existing regulations listed above, these regulations will be reviewed for clarity and efficiency every three years on a continuous basis.

LAWRENCE CONNELL
Chairman

Part 721

Incidental Powers

§721.1 Insurance activities.

A Federal credit union may undertake to facilitate its members' voluntary purchase of types of insurance incidental to promotion of thrift or the borrowing of money for provident and productive purposes such as life savings, loan protection, group, fire, theft, automobile, life, and disability insurance. Pursuant to such activities, a Federal credit union will adhere to the following guidelines:

(a) As used herein, unless the context otherwise requires—

(1) "Contract," "policy," and "plan" shall additionally have reference to any amendments, clauses, riders, endorsements, revisions, renewals or replacements thereof;

(2) "Credit union" shall mean any Federal credit union, its officials, directors, agents, employees, and representatives;

(3) "Insurer" shall mean any insurance company, its officers, directors, agents, employees, and representatives; and

(4) "Person" includes individuals, corporations, associations, firms, partnerships and joint stock companies.

(b) No credit union shall enter into any contract of insurance, or agreements or understandings relating thereto, except as provided in this part.

(c) The credit union may inform its members as to the availability of insurance through informational materials placed in the credit union's office, through the credit union's publications, or by direct mailings to members by the credit union. In this regard, the credit union may not, directly or indirectly, make any list of its membership available or provide addresses of its members to any insurer or use such insurer's stationery or envelopes.

(d) The credit union may be the policyholder of a group insurance plan or a subgroup under a master policy plan and may disseminate information to its members concerning the insurance provided thereunder. Where such plans are adopted by a credit union, the plan should be thoroughly investigated to reasonably determine that it is a reliable one, will protect the interests of the members and complies with these guidelines. The credit union's files should contain documentary evidence of the investigations made concerning the various plans.

(e) The credit union may subscribe to or be a member of a trust or other association whose sole function is to administer insurance plans or programs under policies of insurance for its subscribing or member credit unions or their members: Provided, Such trust or other association:

(1) Shall not be an agent of any insurer;

(2) Shall agree in writing to be bound by these guidelines; and

(3) Shall agree in writing to submit its records and affairs to inspection by the Board as it may require.

(f) The credit union may remit premiums to an insurer or the holder of a master policy on behalf of a credit union member: Provided, The credit union obtains written authorization from such member for remittance by share withdrawals or through proceeds of loans made to such member.

(g) The credit union may make insurance application forms available to its members and may provide instructions on predetermined published insurance rates and such other information as may be required by law.

(h) The credit union may issue certificates of insurance where the credit union is the policyholder or a subgroup under a master policy in a group insurance plan.

(i) The credit union may purchase certain insurance such as life savings insurance and loan protection insurance for all members of the credit union eligible for insurance who have loans or shares: Provided, The cost of the loan protection insurance (if passed on to the borrower as a condition precedent to making the loan) and other incidental costs, including the interest on the loan, cannot exceed the statutory rate of 1 percent per month on the unpaid balance. Where insurance is required as a condition precedent to making the loan, the borrower

must be informed that he may select an insurer of his own choice.

(j) The credit union may not, directly or indirectly, act as agent for an insurer or trust or association described in subsection (e) of this section in processing of claims or in any other agency capacity for such insurer or trust or association described in subsection (e) of this section. Neither an insurer nor a trust or association described in subsection (e) of this section may have an agent or employee permanently or regularly on the premises of the credit union for the purpose of conducting insurance business with the members. Notwithstanding the foregoing, in those States where a licensed agent is required in order to engage in activities authorized in this section, an employee of the particular credit union concerned may act in such an agency capacity, *Provided*, That neither the employee nor the credit union may receive any remuneration for transactions performed pursuant to such an agency, *And provided further*, That the activities conducted pursuant to such an agency shall be limited to those activities otherwise permitted by this section.

(k) The credit union may not agree to accept or contract with the insurer for responsibility of the credit union for nontransmission of premiums nor may the credit union transmit business correspondence to its members for the insurer or trust or association described in subsection (e) of this section such as notices of cancellation, bills, claim forms, etc.

(l) The credit union which passes informational material to its members as set forth in paragraph (c) of this section must indicate to its members in writing that the member must voluntarily determine whether he desires to participate in such insurance plan and when the member makes application for insurance about which the credit union has furnished informational material, he must indicate in writing on the application that he has voluntarily selected the insurer and understands that he may select any other insurer of his own choice. This provision, of course, does not apply where the credit union has purchased insurance such as life savings or loan protection insurance for all members. Nothing herein shall be construed as preventing a credit union from exercising a reasonable privilege of approval or disapproval of the insurance procured by the borrower on the property securing the indebtedness.

(m) The credit union may accept from the insurer or trust or association described in subsection (e) of this section reimbursement for the actual cost of ministerial tasks performed pertaining to insurance. Any compensation, reimbursement, or other consideration in excess of such cost, whether in the form of merchandise, services, cash or otherwise, received or promised, directly or indirectly, to a credit union is prohibited.

(n) The credit union must, in carrying out any of the permitted practices, comply with the applicable insurance laws of the State in which the credit union does business. The guidelines herein are in addition to, and not in lieu of, any applicable laws and regulations of the State in which such insurance activities are transacted.

(o) No credit union shall, directly or indirectly, engage in any act, practice or transaction, with respect to the subject matter of these guidelines, nor enter into any contract of insurance, or agreement or understanding relating thereto, unless all parties to such act, practice, transaction or contract expressly agree in writing to be bound by the provisions hereof.

(p) No credit union shall, directly or indirectly, engage in any act, practice or transaction, otherwise permitted herein, where such act, practice, or transaction shall constitute an evasion, or attempted evasion, of any requirement or prohibition of these guidelines, nor shall any credit union aid, abet or permit, directly or indirectly, any such evasion, or attempted evasion, by any insurer or other person dealing with any such credit union or its members.

§721.2 Group purchasing activities other than insurance.

(a) A Federal credit union may inform its members as to the availability of various group purchasing plans which are related to the promotion of thrift or the borrowing of money for provident and productive purposes by means of informational materials placed in the credit union's office, through its publications, or by direct mailings to members by the credit union. The credit union may not, directly or indirectly, make any list of its membership available or provide addresses of its members to any party associated with such a plan or use the stationery or envelopes provided by those who operate such plans.

(b) A Federal credit union may not be a member of such group purchasing plans nor may it solicit members or participants for such plans. A Federal credit union and its officials, employees, agents, and representatives may not, directly or indirectly, act in any agency capacity in regard to such plans. For purposes of this section, the term "agency capacity" includes but is not limited to the preparation and transmittal of individual membership applications, issuance of membership certificates, explanation of benefits, and other related activities.

(c) A Federal credit union or its officials, employees, agents, and representatives may not, directly or indirectly, receive compensation, reimbursement, or other consideration in excess of the actual cost of making such informational materials available to its members or for any other functions performed in connection with such plans, whether in the form of merchandise, services, cash or otherwise.

(d) A Federal credit union must, in carrying out any of the permitted practices, comply with the applicable laws of the State in which the credit union does business.

§721.3 Operational systems (temporary provisions).

(a) Credit unions, associations of credit unions, and any other parties interested in credit union programs may submit pilot programs relating to electronic funds transfer through remote service units, loan programs, and other operational systems to the Administration for evaluation and approval.

(b) A program will be designated a pilot program if it is determined that the implementation of the program will provide the Adminstration with the information necessary for the establishment of permanent programs which will effectively benefit all credit unions and the parties they serve.

(c) Where a pilot program is deemed appropriate and the submitting party is a Federal credit union, such Federal credit union will be designated the credit union to implement the pilot program, provided the Administration determines that the implementation by such Federal credit union would best serve the Administration's observation and evaluation of the actual operation of the pilot program. If the requesting Federal credit union is deemed unqualified for implementation, or if the submitting party is not a Federal credit union, the Board may, with the consent of the submitting party, designate an alternate Federal credit union to test the program.

(d) A termination date will be specified for the credit union designated to implement a pilot program. If, at the termination date, additional time is needed for complete evaluation, the Board may extend the time at the request of the designated credit union. The Administration reserves the right to terminate or otherwise modify any ongoing pilot program. At the end of the evaluation period or extensions thereof, the Board will determine the benefits of the program and may authorize other qualified credit unions to adopt the same program, or a modification thereof, in which case approval by the Board will be required.

§721.4 Trustees and Custodians of Pension Plans.

(a) A Federal credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension plan which qualifies or qualified for specific tax treatment under section 401(d) or 408 of the Internal Revenue Code, for its members or groups or organizations of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the Federal credit union. All funds held in a trustee or custodial capacity must be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The Federal credit union

shall maintain individual records for each participant which show in detail all transactions relating to the funds of each participant or beneficiary.

(b) The plan shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation or organization other than the Federal credit union or any person acting in his capacity as a director, employee or agent of the Federal credit union, upon notice from the Federal credit union or the Board that the Federal credit union is unwilling or unable to continue to act as trustee or custodian.

Part 722

Rules of Board Procedure

§722.1 Scope.

The rules contained in this Part are the rules of procedures governing how the Board will conduct its business. These regulations concern the exercise of the Board's authority to act on behalf of NCUA, the conduct of Board meetings and the recording of Board action.

§722.2 Number of Votes Required For Board Action.

The agreement of at least two of the three Board members is required for action by the Board.

§722.3 Voting By Proxy.

Proxy voting shall not be allowed at meetings of the Board.

§722.4 Methods of Acting.

(a) Notation voting. Notation voting is the circulation of written memoranda and voting sheets to each Board member and the tabulation of the responses.

(1) Matters that may be decided by Notation Voting. Notation voting may be used only for routine matters, which normally will not include decisions on proposed and final rules, adjudications, and formal Board interpretations and policy statements.

(2) Tallying Votes. Tally sheets will be used which provide for approval with suggested administrative changes. The Secretary of the Board has administrative responsibility over notation voting, including the authority to establish deadlines for voting, receive tally sheets, count votes, and determine whether suggested administrative changes require recirculation.

(3) Veto and Effect of Failure to Vote. In view of the public policy for openness reflected in the Sunshine Act:

(i) each Board member is authorized to veto the use of notation voting for the consideration of any particular matter, and thus require that the matter be placed on the agenda of a Board meeting; and

(ii) the failure by any Board member to respond to a notation vote within the prescribed time frame is to be treated as an indication that the matter be considered at a Board meeting.

(4) Disclosure of Results. A record is to be maintained of Board transactions by use of the notation voting procedure. Public disclosure of this record is determined by the provisions of the Freedom of Information Act (5 U.S.C. §552).

(b) Board Meetings.

(1) Applicability of the Sunshine Act. The Government in the Sunshine Act (P.L. 94-409, 5 U.S.C. §§552b, "Sunshine Act") requires that joint deliberations of the Board be held in accordance with its open meeting provisions (5 U.S.C. §§552b(b) to (f)). Procedural rules for scheduling a meeting and determining the subject matter of a meeting are discussed within this Part.

(2) Presiding Officer. The Chairman is the presiding officer, and, in the Chairman's absence, the designated Vice Chairman shall preside. The presiding officer shall make procedural rulings with the right of the objector to request a Board ruling.

§722.5 Scheduling of Board Meetings.

(a) Meeting Calls.

(1) Regular Periodic Meetings. The Board will hold regular periodic meetings on Thursdays each week unless there is no business or a quorum is not available. The Secretary of the Board will coordinate the dates for meetings not scheduled on Thursday.

(2) Special Meetings. The Chairman shall call special meetings either on the Chairman's own initiative or at the request of any Board member.

(b) Notice of Meetings.

(1) Notifying the Public. The Sunshine act sets forth the procedures for notifying the public of Board meetings.

(2) Notifying Board Members.

(i) Special Meetings. Except in cases of emergency as determined by a majority of the Board, each Board member is entitled to receive notice of any special meeting at least twenty-four hours in advance of such meeting. The notice shall set forth the place, day, hour and nature of business to be transacted at the meeting. The appearance by a Board member at a special meeting shall constitute waiver of notice, unless the Board member specifies that the appearance is solely for the purpose of objecting to lack of proper notice.

(ii) Regular Periodic Meetings. Each Board member is entitled to receive notice of the agenda and/or notice of any changes in the subject matter of such meetings concurrent with the public release of such notices under the Sunshine Act. Each Board member shall be entitled to at least twenty-four hours advance notice of the consideration of a particular subject matter, except in cases of emergency as determined by a majority of the Board.

§722.6 Subject Matter of a Meeting.

(a) Proposed Agenda. The Chairman shall be responsible for initially determining each meeting agenda.

(b) Submission of Agenda Items. Agenda items may be submitted to the Secretary of the Board by each Board member, the Executive Staff (which includes all Office Directors and President of the Central Liquidity Fund), and Regional Directors.

Part 725

Central Liquidity Facility

§725.1 Scope.

This Part contains the regulations implementing the National Credit Union Central Liquidity Facility Act, Subchapter III of the Federal Credit Union Act. The National Credit Union Administration Central Liquidity Facility is a mixed-ownership Government corporation within the National Credit Union Administration. It is managed by the National Credit Union Administration Board and is owned by its member credit unions. The purpose of the Facility is to improve the general financial stability of credit unions by meeting their liquidity needs and thereby encourage savings, support consumer and mortgage lending and provide basic financial resources to all segments of the economy.

§725.2 Definitions.

As used in this Part:

(a) "Agent" means an Agent member of the Facility.

(b) "Agent group" means an Agent member of the Facility consisting of a group of central credit unions, one of which is designated as the group's "Agent group representative" and authorized to transact business with the Facility on behalf of the group or any member of the group.

(c) "Agent loan" means an advance of funds by an Agent to a member natural person credit union to meet liquidity needs which have been the basis for a Facility advance.

(d) "Central credit union" means a Federal or state-chartered credit union primarily serving other credit unions. A credit union is primarily serving other credit unions when the total dollar amount of the shares and deposits received from other credit unions plus loans to other credit unions exceeds 50 percent of the total dollar amount of all shares and deposits plus loans during the qualifying period, as defined in subsection (o) of this section.

(e) "Facility" or "Central Liquidity Facility" means the National Credit Union Administration Central Liquidity Facility.

(f) "Facility advance" means an advance of funds by the Facility to a Regular or Agent member.

(g) "Facility lending officer" means any employee of the Facility or the National Credit Union Administration who has been designated by the NCUA Board as a Facility lending officer.

(h) "Liquidity needs" means the needs of credit unions primarily serving natural persons for:

(1) short-term adjustment credit available to assist in meeting temporary requirements for funds or to cushion more persistent outflows of funds pending an orderly adjustment of credit union assets and liabilities;

(2) seasonal credit available for longer periods to assist in meeting seasonal needs for funds arising from a combination of expected patterns of movement in share and deposit accounts and loans; and

(3) protracted adjustment credit available in the event of unusual or emergency circumstances of a longer term nature resulting from national, regional or local difficulties.

(i) "Management policies" means policies of a credit union with respect to membership, shares, deposits, dividends, interest rates, lending, investing, borrowing, safeguarding of assets, hiring, training and supervision of employees, and general operating and control practices and procedures.

(j) "Member" means a Regular or Agent member of the Facility, unless the context indicates otherwise.

(k) "Member natural person credit union" means a natural person credit union which is a member of an Agent or of any central credit union in an Agent group. Member natural person credit unions are not members of the Facility unless they are also Regular members of the Facility.

(l) "Natural person credit union" means a Federal or state-chartered credit union primarily serving natural persons. A credit union is primarily serving natural persons if it is not a central credit union as defined in subsection (d) of this section.

(m) "NCUA Board" or "Board" means the National Credit Union Administration Board.

(n) "Paid-in and unimpaired capital and surplus" means the balance of the paid-in share accounts and deposits as of a given date, less any loss that may have been incurred for which there is no reserve or which has not been charged against undivided earnings, plus the credit balance (or less the debit balance) of the undivided earnings account as of a given date, after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom. Statutory reserves or special agreement between the credit union and its regulatory authority or between the credit union and its member account insurer shall not be considered as part of surplus.

(o) "Qualifying Period" means:

(1) for initial qualification, any 7 months out of the 12 months immediately preceding the month in which application is made to become a member of the Facility; and

(2) for qualification during each subsequent calendar year, any 7 months out of the previous calendar year.

(p) "Stock subscription" means the stock subscription required for membership in the Facility. "Total subscribed Facility stock" is the sum of all members' stock subscriptions.

§725.3 Regular Membership.

(a) A natural person credit union may become a Regular member of the Facility by:

(1) making application on a form approved by the Facility;

(2) subscribing to capital stock of the Facility in an amount equal to one-half of 1 percent of the credit union's paid-in and unimpaired capital and surplus, as determined in accordance with subsection 725.5(b) of this Part, and forwarding with its completed application funds equal to one-half of this stock subscription;[1] and

(3) furnishing the following reports and documents with the completed membership application;

(i) a copy of the credit union's financial and statistical report for the most recent calendar month; and

(ii) copies of the credit union's charter and bylaws, unless the credit union is federally chartered.

(b) A credit union which becomes a Regular member of the Facility after February 23, 1980, may not receive Facility advances without approval of the NCUA Board for a period of six months after becoming a member. This subsection shall not apply to any credit union which becomes a Regular member of the Facility within six months after such credit union is chartered, or which has had access to Facility funds through an Agent member of the Facility at any time within six months prior to becoming a Regular member of the Facility.

§725.4 Agent Membership.

(a) A central credit union or a group of central credit unions may become an Agent member of the Facility by (in the case of a group of central credit unions, each central credit union in the group must do each of the following except for paragraph (a) (2) of this section, which shall be done by the Agent group representative):

(1) making application on a form approved by the Facility;

(2) subscribing to the capital stock of the Facility in an amount equal to one-half of 1 percent of the paid-in and unimpaired capital and surplus (as determined in accordance with subsection 725.5(b) of this Part) of all the central credit union's or central credit union group's member natural person credit unions, except those which are Regular members of the Facility or which have access to the Facility through, and are included in the stock subscription of, another Agent.[2] Upon approval of the application, the Agent shall forward funds equal to one-half of this initial stock subscription to the Facility;[3]

(3) furnishing the following reports and documents with the completed membership application:

[1] A credit union which submits its application for membership prior to October 1, 1979, is not required to forward these funds to the Facility until October 1, 1979.

[2] A natural person credit union which is a member of more than one Agent member of the Facility must designate through which Agent it will deal with the Facility, and the designated Agent will be responsible for including the capital and surplus of such credit union in the calculation of its stock subscription.

[3] If the application is approved prior to October 1, 1979, these funds are not required to be forwarded to the Facility until October 1, 1979.

(i) a copy of the central credit union's financial and statistical report for the most recent calendar month;

(ii) copies of the central credit union's charter and bylaws, unless such credit union is federally chartered; and

(iii) a list of all the central credit union's member natural person credit unions.

(4) agreeing to submit to the supervision of the NCUA Board and to comply with all regulations and reporting requirements which the NCUA Board shall prescribe for Agent members;

(5) agreeing to submit to periodic unrestricted examinations by the NCUA Board or its designee; and

(6) obtaining the written approval of the NCUA Board.

(b) The NCUA Board may approve a central credit union or group of central credit unions as an Agent member of the Facility, provided the NCUA Board is satisfied that such credit union or credit union group meets certain criteria, including but not limited to the following (in the case of a group of central credit unions, each central credit union in the group must meet these criteria):

(1) the management policies are in writing, approved by the central credit union's board of directors, and reviewed annually by such board;

(2) adequate internal controls are in place to assure accurate and timely reporting of transactions and the safeguarding of assets;

(3) the financial condition of the central credit union is sound with adequate reserves for losses;

(4) surety bond coverage provides protection for the central credit union while the central credit union is performing the duties of an Agent member of the Facility;

(5) management has demonstrated its ability to use such techniques as cash flow analysis, budgeting, and projections of sources and uses of funds to manage the affairs of the central credit union efficiently and in conformity with sound business practices; and

(6) there are no practices, procedures, policies, or other factors that would result in discrimination by the central credit union among natural person credit unions or inhibit its ability to act independently in its role as an Agent member of the Facility.

(c) Each Agent, or in the case of an Agent group, each central credit union in the group, must:

(1) maintain records related to Facility activity in conformity with requirements prescribed by the NCUA Board from time to time; and

(2) submit such reports as may be required by the Facility to deterime financial soundness, quality and level of service, and conformity with established guidelines and procedures.

(d) Each Agent, or in the case of an Agent group, each central credit union in the group, must have on an annual basis a third party independent audit of its books and records and provide the Facility with copies of the report of such audit. The auditor selected must be recognized by a state or territorial licensing authority as possessing the requisite knowledge and experience to perform audits.

(e) Within 30 days after a natural person credit union becomes a member of a central credit union which is an Agent or a member of an Agent group, the agent, or in the case of an Agent group, the agent group representative, shall subscribe to additional capital stock of the Facility in an amount equal to one-half of 1 percent of such credit union's paid-in and unimpaired capital and surplus, and shall forward funds equal to one-half of this stock subscription to the Facility. This subsection shall not apply if the natural person credit union is a Regular member of the Facility or has access to the Facility through, and is included in the stock subscription of, another Agent.

(f) A central credit union or group of central credit unions which becomes an Agent member of the Facility after February 23, 1980, may not receive a Facility advance without approval of the NCUA Board for a period of six months after becoming a member. This subsection shall not apply to any central credit union which becomes an Agent member or a member of an Agent group within six months after such credit union has been an Agent or a member of another Agent group.

(g) Agent members will be compensated for the services they perform for the Facility in a manner to be specified by the NCUA Board.

§725.5 Capital Stock.

(a) The capital stock of the Facility is divided into nonvoting shares having a par value of $50 each. The Facility issues whole and fractional shares. Shares are issued in book entry form upon receipt of payment for such shares, and cannot be transferred or hypothecated except to the Facility.

(b) The capital stock subscriptions provided for in Sections 725.3 and 725.4 shall be:

(1) based on an arithmetic average of paid-

in and unimpaired capital and surplus over the six months preceding application for membership, and

(2) adjusted at the close of each calendar year in accordance with an arithmetic average of paid-in and unimpaired capital and surplus over the twelve months in such calendar year. Payments for adjustments to the capital stock subscription must be received by the Facility no later than March 31 of the following year.

(c) That part of a member's stock subscription which is not paid-in shall be held by the member on call of the NCUA Board and shall be invested in liquid assets as defined in § 742.2(a) of this Chapter.

(d) Any member may at any time purchase additional shares of capital stock in the Facility. Any shares in excess of the member's required paid-in portion of its stock subscription can be redeemed by the member as long as the member maintains investments in other assets sufficient to meet the requirement of paragraph (c) of this section. The member's required paid-in portion of its stock subscription includes one-half of its stock subscription plus any "calls" that may have been issued by the NCUA Board against the "on-call" portion of such stock subscription.

(e) Dividends will be paid on capital stock at such times and rates as are determined by the NCUA Board. The NCUA Board shall declare such dividends no less frequently than annually. All issued (paid for) capital stock shall share in dividend distributions without preference. Payment of dividends will be made by the issuance of capital stock to the member in the amount of the dividend.

§725.6 Termination of Membership.

(a) A member of the Facility whose stock subscription constitutes less than 5 percent of total subscribed Facility stock may withdraw from membership in the Facility six months after notifying the NCUA Board in writing of its intention to do so.

(b) A member of the Facility whose stock subscription constitutes 5 percent or more of total subscribed Facility stock may withdraw from membership in the Facility twenty-four months after notifying the NCUA Board in writing of its intention to do so.

(c) The NCUA Board may terminate membership in the Facility if, after the opportunity for a hearing, the NCUA Board determines the member has failed to comply with any provision of the National Credit Union Central Liquidity Facility Act or any regulation issued pursuant thereto. If membership is terminated under this subsection, the credit union will be required to obtain the approval of the NCUA Board before becoming a member of the Facility again. Such approval will be granted only if the NCUA Board is satisfied that the credit union will comply with such Act and regulations.

(d)(1) If membership is terminated under any provision of this section, the terminated member's stock shall be redeemed upon termination. In such event, the Facility may retain any amount owed to the Facility by the member.

(2) When a member natural person credit union withdraws from membership in a central credit union which is an Agent or a member of an Agent group, the stock subscription of the Agent, or in the case of an Agent group, the stock subscription of the Agent group representative, will be adjusted after the waiting period which would apply under subsection (a) or (b) of this section if the withdrawing credit union were a member of the Facility.

§ 725.7 Special share accounts in federally chartered agent members.

(a) A federally chartered Agent member of the Facility may require its member natural person credit unions to establish and maintain special share accounts in the Agent member to reimburse it for the portion of the Agent's Facility stock subscription which is attributable to the paid-in and unimpaired capital and surplus of each such natural person credit union.

(b) The amount which the Agent member requires each member natural person credit union to maintain in such special share accounts shall be based on a uniform percentage of the paid-in and unimpaired capital and surplus of such credit unions, and shall not exceed the amount of the Agent's stock subscription which is attributable to the capital and surplus of each such credit union. An Agent shall not permit a member to maintain in a special share account any amounts in excess of the required amount.

(c) A natural person credit union that withdraws from membership in an Agent member or that becomes a Regular member of the Facility, shall be entitled to the return of all amounts in its special share account upon withdrawal from membership in the Agent or upon becoming a Regular member, as applicable.

[Sections 725.8 through 725.16 Reserved for future use.]

§725.17 Applications for Extensions of Credit.

(a) A Regular member may apply for a Facility advance to meet its liquidity needs by filing an application on a Facility-approved form, or by any other method approved by the Facility.

(b)(1) An Agent member may apply for a Facility advance by filing an application on a Facility-approved form, or by any other method approved by the Facility.[4]

(2) The Agent's application shall be based on the following:

(i) approved applications to the Agent by its member natural person credit unions for pending loans to meet liquidity needs; or

(ii) outstanding loans previously made by the Agent to meet liquidity needs of its member natural person credit unions; or

(iii) such other demonstrable liquidity needs as the NCUA Board may specify.

(3) An Agent shall not submit an application to the Facility based on the liquidity needs of any member natural person credit union which has not agreed to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans;

(4) Any loan to meet liquidity needs which have been or will be the basis for an application by the Agent for a Facility advance must be applied for on an application form approved by the Facility.

(5) Unless approved by the Facility, an Agent shall not submit an application to the Facility based on the liquidity needs of any credit union which became a member natural person credit union of the Agent after February 23, 1980, unless such credit union has been a member natural person credit union of the Agent for six months, was chartered within six months before becoming a member natural person credit union of the Agent, or had access to the Facility either as a Regular member or through another Agent within six months before becoming a member natural person credit union of the Agent.

(c) In emergency circumstances, the applications for extensions of credit required under subsection (a) and paragraphs (b)(1) and (b)(4) of this section may be verbal, but must be confirmed within five working days by an application as required by such subsection or paragraphs.

(d) Applications of Regular and Agent members shall be filed with a Facility lending officer. Each application for credit which is completed and properly filed will be approved or denied within five working days after the receipt.

[4] If the Agent is an Agent group, the application must be filed by the Agent group representative, and any Facility advance will be made to the Agent group representative.

§725.18 Creditworthiness.

(a) Prior to Facility approval of each application of a Regular member for a Facility advance, the Facility shall consider the creditworthiness of such member.

(b) Prior to an Agent's approval of each application of a member natural person credit union for an extension of credit on which an application by the Agent to the Facility will be based, an Agent shall consider the creditworthiness of such member natural person credit union.

(c) Specific characteristics of an uncreditworthy credit union include, but are not limited to, insolvency as defined by Section 700.1(k) of this Chapter, unsatisfactory practices in extending credit, lower than desirable reserve levels, high expense ratio, failure to repay previous Facility advances as agreed, excessive dependence on borrowed funds, inadequate cash management policies and planning, or any other relevant characteristics creating a less than satisfactory condition. The presence of one or more of these characteristics will not necessarily mean that a credit union will be considered uncreditworthy.

(d) A natural person credit union (whether a Regular member of the Facility or a member natural person credit union) which does not meet the Facility creditworthiness standards may be limited in or denied the use of advances for its liquidity needs.

§725.19 Collateral Requirements.

(a) Each Facility advance to a Regular member shall be secured by a security interest in all the assets of the Regular member.

(b) Each Agent loan shall be secured by a security interest in all the assets of the member natural person credit union which receives the loan.

(c) Each Facility advance to an Agent member shall be secured, directly or indirectly, by all the Agent loans made by the Agent member, and by the collateral securing such loans.

§725.20 Repayment, Security and Credit Reporting Agreements; Other terms and Conditions.

(a) Regular and Agent members, or in the case of an Agent group, the Agent group representative, shall sign the repayment, security and credit reporting agreements prescribed by the Facility, and all Facility advances to Regular and Agent members shall be governed by the terms and conditions of such agreements.

(b) All Agent loans shall be made subject to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans.

(c) Other terms and conditions applicable to Facility advances and Agent loans will be specified in confirmations of credit provided in connection with such advances and loans, and/or in operating circulars of the Facility.

§725.21 Modification of Agreements.

The repayment, security, and credit reporting terms under which Facility advances and Agent loans will be made, as provided in section 725.20 of this Part, shall be subject to modification from time to time as the NCUA Board may determine. Any change in such terms shall be published in the FEDERAL REGISTER and shall apply to all advances disbursed by the Facility after the effective date of the change.

§725.22 Advances to Insurance Organizations.

(a) In accordance with policies established by the NCUA Board, the Facility may advance funds to a State credit union share or deposit insurance corporation, guaranty credit union, guaranty association, or similar organization. Requests for such advances shall be supported by an application which sets forth and supports the need for the advance.

(b) Advances under subsection (a) shall be subject to the approval of the NCUA Board and shall be made subject to the following terms:

(1) the advance shall be fully secured,

(2) the maturity of the advance shall not exceed 12 months,

(3) the advance shall not be renewable at maturity, and

(4) the funds advanced shall not be relent at an interest rate exceeding that imposed by the Facility.

§725.23 Other Advances.

(a) The NCUA Board may authorize extensions of credit to members of the Facility for purposes other than liquidity needs if the NCUA Board, the Board of Governors of the Federal Reserve System, and the Secretary of the Treasury concur in a determination that such extensions of credit are in the national economic interest.

(b) Extensions of credit approved under the conditions of paragraph (a) of this section shall be subject to such terms and conditions as shall be established by the NCUA Board.

Part 735

Employee Responsibility and Conduct

§735.101 Adoption of regulations.

Pursuant to 5 CFR 735.104(f) the National Credit Union Administration (referred to hereinafter as the Administration) hereby adopts the following sections of Part 735 of Title 5, Code of Federal Regulations: Sections 735.101-102, 735.201a, 735.202 (a), (e), (f), 735.210, 735.302, 735.303 (a), 735.304, 735.305(a), 735.306, 735.403(a), 735.404, 735.405-735.411, and 735.412(b) and (d).

These adopted sections are modified and supplemented as set forth in this part.

§735.102 Review of statements of employment and financial interests.

Each statement of employment and financial interests submitted under this part shall be reviewed by the General Counsel. When this review indicates a conflict between the interests of an employee or special Government employee of the Administration and the performance of his services for the Government, the General Counsel shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve the indicated conflict. If the indicated conflict cannot be resolved the General Counsel shall forward a written report on the indicated conflict to the National Credit Union Administration Board.

§735.103 Disciplinary and other remedial action.

An employee or special Government employee of the Administration who violates any of the regulations in this part or adopted under §735.101 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of his conflicting interest; or

(c) Disqualification for a particular assignment.

§735.104 Gifts, entertainment, and favors.

The Administration authorizes the exception to 5 CFR 735.202(a) set forth in 5 CFR 735.202(b) (1)-(4).

§735.105 Outside employment and other activity.

(a) An employee of the Administration may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment. An employee who engages in outside employment shall report that fact in writing in advance to the Board, or to the Regional Director if a regional employee is involved.

(b) Employees of the Administration may engage in teaching, writing, and lecturing, provided, however, employees shall not receive compensation or anything of monetary value for any consultation, discussion, writing, lecturing or appearance, the subject matter of which is

devoted substantially to the specific responsibilities, programs, or operations of the Administration, or which draws substantially on official data or ideas which have not been published or otherwise publicly released by the Administration. The foregoing limitation on the receipt of compensation or anything of monetary value shall not be construed as applying to amounts received for reimbursement for travel and other expenses incurred in performing the outside employment.

(c) Incompatible activities in which an employee may not engage include, but are not limited to, the following:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

§735.106 Financial interest.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts, or appears to conflict with his Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive Order, this section, or the Administration regulations.

§735.107 Special statutory provisions.

The Administration authorizes the adoption of the regulations regarding miscellaneous statutory provisions as set forth in 5 CFR 735.210.

§735.108 Specific provisions of Administration regulations governing special Government employees.

(a) Special Government employees of the Administration shall adhere to the standards of conduct applicable to employees as set forth in this part and adopted under §735.101, except 5 CFR 735.203(b).

(b) Special Government employees of the agency may teach, lecture, or write in a manner not inconsistent with 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), the agency authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by §735.104.

§735.109 [Deleted]

§735.110 Supplementary statements.

Notwithstanding the filing of the annual supplementary statement of employment and financial interests on June 30 as required by 5 CFR 735.406, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or the regulations in this part or adopted under §735.101.

§735.111 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§735.112 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§735.113 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

Part 740

Advertisement of Insured Status

§740.0 Scope.

The regulation contained in this part prescribes the requirements with regard to the official sign insured credit unions must display and the requirements with regard to the official advertising statement insured credit unions must include in their advertisements. It also prescribes an approved short title which insured credit unions may use at their option. It imposes no limitations on other proper advertising of insurance of shares or deposits by insured credit unions.

§740.1 Definition.

Deposits as used herein include the purchase of shares, share certificates or share deposit accounts of a member or individual of a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member or individual.

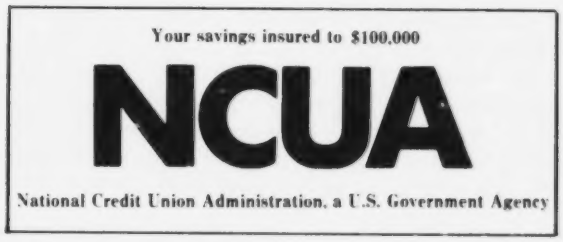
§740.2 Advertising must be accurate.

No insured credit union shall use advertising (whether printed, radio, display, or of any other nature) or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition. When an insured credit union is operating a branch office or offices outside of the municipality in which its principal office is located, all advertising of, or by, any such branch office, shall state clearly the location of the principal office of such insured institution.

§740.3 Mandatory requirements with regard to the official sign and its display.

(a) *Insured credit unions to display official sign.* Each insured credit union shall continuously display an official sign as hereinafter prescribed at each station or window where insured shares or deposits are usually and normally received in its principal place of business and in all its branches: *Provided*, That no credit union becoming an insured credit union shall be required to display such official sign until (30) days afters its first day of operation as an insured credit union. The official sign may be displayed by any insured credit union prior to the date display is required. Additional signs in other sizes, colors, or materials, incorporating the basic design of the official sign, may be displayed in other locations within an insured credit union.

(b) *Official sign.* The official sign referred to in paragraph (a) of this section shall be in such form as prescribed by the Board.



(1) All insured credit unions will automatically be furnished an initial supply of official signs, at no cost, from the National Credit Union Administration for compliance with paragraph (a) of this section. If the initial supply is not adequate for compliance with paragraph (a) of this section, an immediate request for additional signs must be made. Any credit union

that does not have an adequate supply but requests additional signs from the National Credit Union Administration, shall not be deemed to have violated this regulation on account of not displaying an official sign, or signs, unless the credit union shall omit to display such official sign or signs after receipt thereof.

(2) Official signs reflecting variations in color and materials and additional signs reflecting variations in size, color and materials for use other than as prescribed in paragraph (a) of this section may be procured by insured credit unions from commercial suppliers.

(c) *Receipt of deposits at same teller's station or window as noninsured credit union or institution.* An insured credit union is forbidden to receive deposits at any teller's station or window where any noninsured credit union or institution receives deposits or similar liabilities, except in credit union centers, service centers, or branches servicing more than one credit union where some of the credit unions are insured by the Board and some are not; there must be placed immediately above or beside each official sign displayed another sign stating "only the following credit unions serviced by this facility are insured_____" (The full name of each credit union insured will follow the word insured). The lettering will be 3/8 inches high and easily visible to all members conducting share or share deposit transactions.

(d) *Required changes in official sign.* The Board may require any insured credit union, upon at least 30 days' written notice, to change the wording of its official signs in a manner deemed necessary for the protection of share holders or others.

(e) Automated teller machine and point of sale terminal exception. For purposes of this section the terms "branch," "station," "teller station," and "window" do not include automated teller machines or point of sale terminals.

§740.4 Mandatory requirements with regard to the official advertising statement and manner of use.

(a) Insured credit unions to include official advertising statement in all advertisements except as provided in paragraph (c) of this section. Each insured credit union shall include the official advertising statement, prescribed in paragraph (b) of this section, in all of its advertisements except as provided in paragraph (c) of this section.

(1) An insured credit union is not required to include the official advertising statement in its advertisements until thirty (30) days after its first day of operation as an insured credit union.

(2) (i) In cases where the Board shall find the application to be meritorious, that there has been no neglect or willful violation in the observance of this section and that undue hardship will result by reason of its requirements, the Board may grant a temporary exemption from its provision to a particular credit union upon its written application setting forth the facts.

(ii) Any application made by an insured credit union under this section should be filed with the Regional Director who will forward it with his recommendation to the Board. Such application should (a) be in writing, (b) be signed by the president or other managing officer of the board of directors of the credit union, and (c) state the reason for the request and why it should be granted.

(3) In cases where advertising copy not including the official advertising statement is on hand on the date the requirements of this section become operative, the insured credit union may cause the official advertising statement to be included by use of an overstamp or by other means for a period of 6 months or until the supplies are expected whichever occurs first.

(b) *Official advertising statement.* The official advertising statement shall be in substance as follows: "This credit union is insured by the National Credit Union Administration." The word "the" may be omitted. The words "This credit union is" or the name of the insured credit union followed by the words "is a" may be added before the word "insured." The short title "Insured by NCUA" and a reproduction of the official seal, may be used by insured credit unions at their option as the official advertising statement. The official advertising statement shall be of such size and print to be clearly legible.

(c) *Types of advertisements which do not require the official advertising statement.* The following is an enumeration of the types of advertisements which need not include the official advertising statement:

(1) Statements of condition and reports of condition of an insured credit union which are

required to be published by State or Federal law or regulation;

(2) Credit union supplies such as stationery (except when used for circular letters), enveopes, deposit slips, checks, drafts, signature cards, deposit passbooks, and noninsurable certificates, etc.;

(3) Signs or plates in the credit union office or attached to the building or buildings in which the offices are located;

(4) Listing in directories;

(5) Advertisements not setting forth the name of the insured credit union;

(6) Display advertisements in credit union directory, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured;

(7) Joint or group advertisements of credit union services where the names of insured credit unions and noninsured credit unions are listed and form a part of such advertisements;

(8) Advertisements by radio which do not exceed thirty (30) seconds in time;

(9) Advertisements by television, other than display advertisments, which do not exceed thirty (30) seconds in time;

(10) Advertisements which are of the type or character making it impractical to include thereon the official advertising statement incuding but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains;

(11) Advertisements which contain a statement to the effect that the credit union is insured by the National Credit Union Administration, or that its deposits and shares or depositors are insured by the National Credit Union Administration to the maximum of $100,000 for each depositor or shareholder;

(12) Advertisements relating specifically and only to the making of loans by the credit union or loan services;

(13) Advertisements relating specifically and only to safekeeping box business or services;

(14) Advertisements relating specifically and only to traveler's checks on which the credit union issuing or causing to be issued the advertisement is not primarily liable;

(15) Advertisements relating specifically and only to loan life insurance.

(d) *Outstanding billboard advertisements.* Where an insured credit union has billboard advertisements outstanding which are required to include the official advertising statement and has direct control of such advertisements either by possession or under the terms of a contract, it shall, as soon as it can be consistent with its contractual obligations, cause the official advertising statement to be included therein.

(e) *Official advertising statement in non-English language.* The non-English equivalent of the official advertising statement may be used in any advertisement: *Provided,* That the translation has had the prior written approval of the Board.

Part 741

Requirements for Insurance and Voluntary Termination of Insurance

§741.1 Minimum surety bond requirements.

Any credit union which makes application for insurance of its accounts pursuant to title II of the Federal Credit Union Act must possess the minimum surety bond coverage stated in §701.20 of this chapter in order for its application for such insurance to be approved and for such insurance coverage to continue. A federally insured credit union whose surety bond coverage is terminated shall mail notice of such termination to the Federal Regional Director not less than thirty-five (35) days to the effective date of such termination.

§741.2 Minimum period for verification of accounts.

The Supervisory Committee of any credit union which makes application for insurance of its accounts pursuant to title II of the Federal Credit Union Act must verify or cause to be verified, under controlled conditions, the members' passbooks and accounts with the records of the treasurer not less frequently than once every 2 years. If such verification has not been made within 2 years prior to the date of submission of the application for insurance, the credit union concerned shall cause such verification to be completed prior to submission of such application and at least every 2 years thereafter.

§741.3 Maximum borrowing authority.

Any credit union which makes application for insurance of its accounts pursuant to title II of the Federal Credit Union Act, in order for such application to be approved and for such insurance coverage to continue, must not borrow, from any source, an aggregate amount in excess of 50 per centum of its paid-in and unimpaired capital and surplus.

§741.4 Criteria.

In deterimining the insurability of a credit union which makes application for insurance of its accounts pursuant to Title II of the Federal Credit Union Act, the following criteria shall be applied:

(a) *Adequacy of reserves.* The credit union must be solvent. A Federal credit union must meet the reserve transfer requirements of section 116(a) of the Federal Credit Union Act and the reserve transfer requirements set forth in §702.3 of this chapter. In the case of a state-chartered credit union, that credit union must meet the reserve transfer requirements of the law of the state under which the credit union is chartered: *Provided however,* That the Board may require additional reserves where the reserves required by State law are not substantially similar to those required by section 116 of the Federal Credit Union Act. State-chartered credit unions may be required to establish an additional special reserve for investments if those credit unions are permitted by their respective State laws to make investments beyond those authorized in the Federal Credit Union Act.

(b) *Financial condition and policies.* In addition to the requirements of paragraph (a) of this section, the following factors are to be considered in determining whether the credit union's financial condition and policies are both safe and sound:

(1) The existence of unfavorable trends which may include excessive losses on loans (i.e., losses which exceed the regular reserve or its equivalent [in the case of state-chartered credit unions] plus other irrevocable reserves established as a contingent against losses on

loans), and an expense ratio so high that the required transfers to reserves create a net operating loss for the period or that the net gain after these transfers is not sufficient to permit the payment of a nominal dividend.

(2) Lending policies including adequate documentation of secured loans (as described in Chapter V of the *Credit Manual for Federal Credit Unions*) and the protection of security interests by recording, bond, insurance, or other adequate means, adequate determination of the financial capacity of borrowers and comakers for repayment of the loan, and adequate determination of value of security on loans (as described in Chapter V of the *Credit Manual for Federal Credit Unions*) to ascertain that said security is adequate to repay the loan in the event of default;

(3) Investment policies which are within the provisions of applicable law and regulations, i.e., the Federal Credit Union Act and Part 703 of this chapter for Federal credit unions and the laws of the State in which the credit union operates for state-chartered credit unions.

(c) *Fitness of management.* The officers, directors, and committee members of the credit union must adhere to the provisions of applicable law, regulations, its charter and bylaws, and to the accounting requirements set forth in the *Accounting Manual for Federal Credit Unions* or similar acceptable accounting principles. No person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted of any criminal offense involving dishonesty or breach of trust, except with the written consent of the Board.

(d) *Insurance of member accounts would not otherwise involve undue risk to the Fund.* The credit union must maintain adequate surety bond coverage as specified in §741.1. Any circumstances which may be unique to the particular credit union concerned shall also be considered in arriving at the determination of whether or not an undue risk to the Fund is or may be present. For purposes of this section, the term "undue risk to the Fund" is defined as a condition which creates a probability of loss in excess of that normally found in a credit union and which indicates a reasonably foreseeable probability of the credit union becoming insolvent because of such condition, with a resultant claim against the Fund and a decrease therein.

(e) *Powers and purposes.* The credit union must not perform services other than those which are consistent with the promotion of thrift and the creation of a source of credit except as otherwise permitted by law or regulation.

(f) *Letter of disapproval.* A credit union which makes application for share insurance and its application is disapproved shall receive a letter indicating the reasons for such disapproval, a citation of the authority for such disapproval, and suggested methods by which the applying credit union may correct these deficiencies and thereby qualify for share insurance.

§741.5 Insurance Premium Statements.

(a) On or before January 31 of each insurance (calendar) year, each federally insured credit union which became insured prior to the beginning of that year shall file with the Board a certified statement showing the total amount of the member accounts in the credit union at the close of the preceding insurance (calendar) year and the amount of the premium charge for insurance due to the Fund for that year, as computed under Title II, section 202(c)(1) of the Federal Credit Union Act. The certified statements required to be filed with the Board pursuant to this section shall be in such form and shall set forth such supporting information as the Board shall require. The Insurance Premium Statement, Form NCUA-1308, has been designated as the authorized statement required in this section. Copies of Form NCUA-1308 can be obtained from the National Credit Union Administration office in Washington, D.C., or any regional National Credit Union Administration office.

(b) Each credit union which was in existence prior to October 19, 1970, and which becomes federally insured after January 1 of any insurance (calendar) year shall file with the Board a certified statement to provide supporting information similar to that outlined in paragraph (a) of this section and the amount of the premium charge for insurance due to the Fund for that year, as computed under Title II, section 202(c)(2) of the Fedeal Credit Union Act, no later than 30 days after the date on which the credit union receives the Certificate of Insurance issued to it under section 201 of the Federal Credit Union Act. The Insurance Premium Statement, Form NCUA-1307, has

been designated as the authorized statement required in this section. Copies of Form NCUA-1307 can be obtained from the National Credit Union Administration office in Washington, D.C., or any regional National Credit Union Administration office.

(c) Each credit union which is chartered after October 19, 1970, and which becomes federally insured in the insurance (calendar) year in which it is chartered shall file with the Board a certified statement to provide supporting information similar to that outlined in paragraph (a) of this section and the amount of the premium charge for insurance due to the Fund for that year as computed under Title II, section 202(c)(3) of the Federal Credit Union Act, no later than January 31 of the insurance (calendar) year, following the year in which the credit union was chartered. The Insurance Premium Statement, Form NCUA-1309, has been designated as the authorized statement required in this section. Copies of Form NCUA-1309 can be obtained from the National Credit Union Administration office in Washington, D.C., or from any National Credit Union Administration regional office.

(d) Each such statement shall be certified by the president of the credit union, or by any officer of the credit union designated by its board of directors, that to the best of his knowledge and belief the statement is true, correct, and complete.

§741.6 Notice of Voluntary Termination of Insured Status.

In the event of the termination of a credit union's status as an insured credit union as provided under subsection 206(a) of the act, the credit union shall give prompt notice to all of its members whose accounts are insured that it has ceased to be an insured credit union. The notice, which shall be mailed to each member's last address of record on the books of the credit union, shall be as follows:

NOTICE

(Date)

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act, will terminate as of the close of business on the _____ day of _____;

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration;

3. Accounts in the credit union on the __ day of _____, _____, up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the _____ day of _____, _____;

Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)

(Address)

Part 742

Liquidity Reserves

§742.1 Scope and Purpose.

(a) This part applies to all credit unions that are insured by the National Credit Union Share Insurance Fund and either

(1) have assets of $2,000,000 or more; or

(2) operate share draft (as defined at 12 CFR 701.34(a)(1)) or equivalent programs.

(b) The purpose of this part is to establish a liquidity reserve requirement that enhances the ability of covered credit unions to meet member demands for liquid funds and avoid asset losses.

§742.2 Definitions.

As used in this part:

(a) "Liquid Assets" means the following unpledged assets:

(1) cash on hand;

(2) share or deposit accounts with remaining maturities of 1 year or less maintained in central credit unions or institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation;

(3) investments in obligations of the United States or an agency thereof, or securities fully guaranteed as to principal and interest thereby, which are authorized under 12 U.S.C. 1757(7) and which have a remaining maturity of 1 year or less;

(4) Common trust investments, and similar investments in funds of securities authorized for Federal credit unions, the objectives of which are to provide daily liquidity for participating credit unions;

(5) shares in the National Credit Union Administration Central Liquidity Facility or in special share accounts authorized by § 725.7 of this Chapter, and

(6) in the case of a federally-insured state chartered credit union, any asset held in satisfaction of liquidity requirements imposed by applicable state law or regulation.

(7) Balances maintained by federally insured credit unions in a Federal Reserve bank, or in a pass-through account to a Federal Reserve bank, pursuant to the requirements of Section 19 (b) of the Federal Reserve Act (12 U.S.C. 461 (b)).

(b) "Central credit union" means a credit union operated primarily to serve other credit unions and in which the total dollar amount of shares and deposits received from other credit unions plus loans to other credit unions exceeds 50 percent of the total dollar amount of all shares and deposits plus loans.

(c) "Liability base" means an insured credit union's member accounts (as defined at 12 U.S.C. 1752(5) and notes payable, excluding

(1) share certificates (as defined at 12 C.F.R. 701.35(a)(2)) and equivalent member accounts with remaining maturities in excess of 1 year.

(2) notes payable with remaining maturities in excess of one year, and

(3) member accounts that have been provided in a specific amount as security on a loan, up to the amount of the loan balance.

§742.3 Liquidity reserve.

(a) Each credit union that is subject to this Part shall maintain a reserve of liquid assets ("liquidity reserve") the amount of which shall equal, at a minimum, 5% of the total dollar amount of the credit union's liability base.

(b) The liquidity reserve shall be determined on a monthly basis, not later than the tenth day of each month, and shall be based on the insured credit union's liability base as of the last day of business of the previous month.

(c) Liquid assets shall be valued at their book value for purposes of the liquidity reserve, except that common trust investments and similar investments shall be valued net of any deferred loss.

§742.4 Depletion and Replenishment.

(a) The liquidity reserve may be depleted below the level required by this Part only to meet outflows of shares or deposits.

(b) In the event of depletion of the liquidity reserve below the level required by this Part:

(1) a Federal credit union shall immediately notify the appropriate National Credit Union Administration Regional Director and shall replenish the reserve within 60 days unless an extension is approved by the Regional Director;

(2) a federally-insured state chartered credit union shall immediately notify its state supervisory authority and shall replenish the reserve within 60 days unless an extension is approved by the state supervisory authority.

(c) In any case where the liquidity reserve has been depleted below the level required by this part, and the reserve has not been replenished within 60 days or any extended time period in accordance with subsection (b) above, the credit union must notify the appropriate National Credit Union Administration Regional Director (unless, in the case of a federally-insured state chartered credit union, the state supervisory authority assumes this responsibility).

Part 745

Clarification and Definition of Account Insurance Coverage

§745.1 Definitions.

(a) Depositors means those persons who are members or nonmembers of credit unions which are allowed by law or regulation to deposit money in such credit unions.

(b) Deposits include the purchase of shares, share certificates or share deposit accounts by a member or nonmember of a credit union of a type approved by the Administrator which evidences money or its equivalent received or held by a credit union in the usual course of business for which it has given or is obligated to give credit to the account of the member or nonmember.

§745.2 General principles applicable in determining insurance of deposits.

(a) General: This Part 745 provides for determination by the Administrator of the insured depositors of an insured credit union and the amount of their insured accounts. The rules for determining the insurance coverage of accounts maintained by depositors in the same or different rights and capacities in the same insured credit union are set forth in the following provisions of this part. Insofar as rules or local law enter into such determinations, the law of the jurisdiction in which the insured credit union's principal office is located shall govern.

(b) The regulations in this part in no way are to be interpreted to authorize any type of account that is not authorized by the Federal Law or Regulation or State Law or Regulation or by the bylaws of a particular credit union. The purpose is to be as inclusive as possible of all possible situations.

(c) Records: (1) The account records of the insured credit union shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian, or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either from the records of the credit union or the records of the depositor maintained in good faith and in the regular course of business.

(3) The deposit records of an insured credit union in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee.

(4) The interests of the coowners of a joint deposit shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common.

(d) Valuation of trust interests: (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in §20.2031—7 of the Federal Estate Tax Regulations (26 CFR 20.2031—7).

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by the Administrator to the trustee with respect to all such trust interests shall not exceed the basic insured amount of $100,000.

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust.

(4) The term "trust interest" means the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, but does not include any interest retained by the settlor.

§745.3 Single ownership accounts.

Funds owned by an individual and deposited in the manner set forth below shall be added together and insured up to $100,000 in the aggregate.

(a) *Individual accounts.* Funds owned by an individual (or by the community between husband and wife of which the individual is a member) and deposited in one or more deposit accounts in his own name shall be insured up to $100,000 in the aggregate.

(b) *Accounts held by agents or nominees.* Funds owned by a principal and deposited in one or more deposits in the name or names of agents or nominees shall be added to any individual deposit of the principal and insured up to $100,000 in the aggregate.

(c) *Accounts held by guardians, custodians, or conservators.* Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more deposits in the name of the guardian, custodian, or conservator shall be added to any individual deposit accounts of the ward or minor and insured up to $100,000 in the aggregate.

§745.4 Testamentary accounts.

(a) Funds owned by an individual and deposited in a revocable trust account, tentative or "Totten" trust account, "payable-on-death" account or similar account evidencing an intention that on his death the funds shall belong to his spouse, child, or grandchild shall be insured up to $100,000 in the aggregate as to each such named beneficiary, separately from any other accounts of the owner.

(b) If the named beneficiary of such an account is other than the owner's spouse, child, or grandchild, the funds in such account shall be added to any individual accounts of such owner and insured up to $100,000 in the aggregate.

§745.5 Accounts held by executors or administrators.

Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of his estate and deposited in one or more accounts shall be insured up to $100,000 in the aggregate, separately from the individual deposits of the beneficiaries of the estate or of the executor or administrator.

§745.6 Accounts held by a corporation or partnership

Deposits of a corporation or partnership engaged in any independent activity shall be insured up to $100,000 in the aggregate. A deposit of a corporation or partnership not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership and, for deposit insurance purposes, the interest of each person in such a deposit shall be added to any other deposit individually owned by such person and insured up to $100,000 in the aggregate.

§745.7 Accounts held by an unincorporated association.

Deposits of an unincorporated association engaged in any independent activity shall be insured up to $100,000 in the aggregate. A deposit of an unincorporated association not engaged in an independent activity shall be deemed to be owned by the persons comprising such association and, for deposit insurance purposes, the interest of each owner in such a deposit account shall be added to any other deposit accounts individually owned by such person and insured up to $100,000 in the aggregate.

§745.8 Joint accounts.

(a) *Separate insurance coverage.* Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from deposit accounts individually owned by the coowners.

(b) *Qualifying joint accounts.* A joint account shall be deemed to exist, for purposes of insurance of accounts, only if each coowner has personally executed a joint account signature card and possesses withdrawal rights. The restrictions of this paragraph shall not apply to coowners of a time certificate of deposit or to any deposit obligations evidenced by a negotiable instrument, but such a deposit must in fact be jointly owned.

(c) *Failure to qualify.* An account owned jointly which does not qualify as a joint account for purposes of insurance of accounts shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate.

(d) *Same combination of individuals.* All joint accounts owned by the same combination of individuals shall first be added together and insured up to $100,000 in the aggregate.

(e) *Interest of each coowner.* The interests of each coowner in all joint accounts owned by different combinations of individuals shall then be added together and insured up to $100,000 in the aggregate.

§745.9-1 Trust accounts.

All trust interests, for the same beneficiary, deposited and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other deposit or share accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

§745.9-2 Keogh Accounts and Individual Retirement Accounts.

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under §401(d) or §408(a) of the Internal Revenue Code shall be insured up to $100,000 separately from other deposits of the participant or designated beneficiary.

(b) Upon liquidation of the credit union, any insurance coverage payment shall be made by the Administrator to the trustee or custodian, or the successor trustee or custodian, unless otherwise directed in writing, by the plan participant or beneficiary.

§745.10 Public unit accounts.

(a) Public funds invested in Federal credit unions and federally-insured state credit unions authorized to accept such investments shall be insured as follows:

(1) Each official custodian of funds of the United States lawfully investing the same in a federally-insured credit union shall be separately insured up to $100,000;

(2) Each official custodian of funds of any state of the United States or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in the same state shall be separately insured up to $100,000;

(3) Each official custodian of funds of the District of Columbia lawfully investing the same in a federally-insured credit union in the District of Columbia shall be separately insured up to $100,000;

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Panama Canal Zone, or any territory or possession of the United States, or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively, shall be separately insured up to $100,000;

(5) Each official custodian referred to in subsections (a)(2), (3), and (4) of this section lawfully investing such funds in a federally-insured credit union outside their respective jurisdictions shall be separately insured up to $100,000; and

(6) For purposes of this section, if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit, but he shall not be separately insured with respect to all public funds of the same public unit by virtue of holding different offices in such unit or by holding such funds for different purposes.

(b) With respect to public funds invested in federally-insured state credit unions, the maximum amount of each account shall not exceed 5 per centum of the total assets of the credit union at the time of the investment and no investment shall be accepted in an amount which would cause the aggregate amount of all such accounts to exceed 20 per centum of the total assets of the credit union.

(c) For the purposes of this section, the terms "public unit" and "political subdivision" have the same meaning as that stated in §701.32(d) and (e) respectively.

§745.11 Deposits evidenced by negotiable instruments.

If any insured deposit obligation of a credit union be evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, or negotiable traveler's check or letter of credit, the owner of such deposit obligation will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the credit union provided the instrument was in fact negotiated to such owner prior to the date of the closing of the credit union. Affirmative proof of such negotiation must be offered in all cases to substantiate the claim.

§745.12 Deposit obligations for payment of items forwarded for collection by credit union acting as agent.

Where a closed credit union has become obligated for the payment of items forwarded for collection by a credit union acting solely as agent, the owner of such items will be recognized for all purposes of claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union when such claim for insured accounts, if otherwise payable, has been established by the execution and delivery of prescribed forms. Such credit union forwarding such items for the owners thereof will be recognized as agent for such owners for the purpose of making an assignment of the rights of such owners against the closed insured credit union to the Administrator and for the purpose of receiving payment on behalf of such owners.

§745.13 Notification of depositors/shareholders.

Each insured credit union is required to provide notice of these rules and regulations for Clarification and Definition of Insurance Coverage of Member Accounts, Part 745, not later than 180 days after the effective date of these regulations or 90 days after being insured, whichever is later, to the owners of each account which had a balance in excess of $5,000 on any date selected by the credit union between October 1, 1970, and June 30, 1971. Credit unions insured after the effective date of this regulation may select the end of any month of the preceding 6 months before being insured to determine balances in excess of $5,000. Such notice shall consist of mailing to such owners at their last known address as shown on the records of the insured credit union, a question and answer brochure on insurance of deposits. A small initial supply of such brochures will be prepared and furnished without cost by the National Credit Union Administration. Additional copies may be purchased from the U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402, or your usual source of credit union supplies. Such information shall also be made available to the public at each teller's station or window where deposits or shares are normally received and at new account or share stations of an insured credit union. Additional explanatory materials may also be sent to depositors at the option of the insured credit union.

For purposes of this section the terms "teller station" and "window" do not include automated teller machines or point of sale terminals.

Part 746

Rebate Procedures For Federally Insured Credit Unions

§746.1 Entitlement.

(a) Any federally insured credit union closed for liquidation, whether voluntarily or involuntarily or solvent or insolvent, is entitled to a rebate of premiums paid to the National Credit Union Share Insurance Fund.

(b) Rebates shall be in accordance with these regulations but no payment shall be made during any period in which:

(1) A loan to the Fund from the Federal Government is outstanding; or

(2) The Administrator determines that the payment would unduly jeopardize the financial condition of the Fund.

A credit union otherwise entitled to a rebate of premiums shall not lose its entitlement because payment thereof cannot, at any given time, be made under the limitations prescribed in subparagraph (1) or (2) of this paragraph.

(c) The amount of rebate of premiums to which a credit union is entitled under paragraph (a) of this section shall be computed as follows:

(1) From the total amount of premiums paid by the credit union, plus interest on such payments at the average rate of interest earned by the Fund on its assets during each of the years in which payments were made through the end of the calendar month in which the Board voted to present the question of voluntary liquidation to its members or was placed in involuntary liquidation by the Administrator; subtract the sum of:

(i) The credit union's pro rata share of the Fund's administrative expenses during the period in which the credit union had an insured status through the end of the calendar month in which the Board voted to present the question of voluntary liquidation to its members or was placed in involuntary liquidation by the Administrator;

(ii) The credit union's pro rata share of the net insurance payments (other than those referred to in subdivision (iii) of this subparagraph) chargeable to the Fund for claims arising during such period; and

(iii) The net insurance payments chargeable to the Fund for claims arising in connection with the liquidation of the credit union.

(d) A credit union's pro rata share of the Fund's administrative expenses or net insurance payments for any year (or part thereof) shall be determined by dividing the total amount credited to members' and nonmembers' accounts in the credit union at the end of such year (or part thereof), by the total amount credited to all such accounts in all credit unions having an insured status at the end of such year (or part thereof).

§746.2 Effective date for determining rebate.

For purposes of determining the amount of the rebate, a credit union whose Board of Directors votes to present the question of liquidation to its membership, or is placed in involuntary liquidation by the Administrator on any day of the month, other than that month's end, shall be considered to have entered liquidation at the end of the month in which it took such action.

§746.3 Payment of rebate.

Rebates shall be paid to a liquidating credit union as soon as possible and in any event prior to final distribution of the credit union's assets to its members.

§746.4 Recovery of rebate.

In the event the credit union resumes operations, the entire amount of the rebate shall be repaid to the National Credit Union Administration within 10 days after resuming operations. However, a credit union shall not be required to pay a premium for the insurance of its members' accounts while it is in liquidation.

Part 747

Administrative Actions, Adjudicative Hearings, and Rules of Practice and Procedure

§747.01 Scope.

(a) This Part describes the various administrative adjudicative actions available to the National Credit Union Administration Board, the grounds for those actions and the procedures used in hearings related to each available action. The administrative actions described herein, as well as the grounds and hearing procedures for each, are controlled by sections 120(b), 206, 207(a) and 304(c)(3) of the Federal Credit Union Act. Should any provision of this Part be inconsistent with these, or any other provisions of said Act, as amended, the Act shall control. Judicial enforcement of any action or order described in this Part, as well as judicial review thereof, shall be as prescribed under the Federal Credit Union Act (12 U.S.C. §1751 et seq.) (hereinafter Act) and the Administrative Procedure Act (5 U.S.C. §500 et seq.).

(b) As used in this Part, the term insured credit union means any Federal credit union or any state chartered credit union insured under Subchapter II of the Act unless the context indicates otherwise.

Subpart A—Rules of Practice and Procedure.

§747.101 Scope.

(a) This subpart prescribes the rules of practice and procedures applicable to the following hearings:

(1) Those held pursuant to section 206(b) of the Act, pertaining to the involuntary termination of the insured status of an insured credit union (Subpart B);

(2) Those held pursuant to sections 206(e) and (f) of the Act, pertaining to the issuance of cease-and-desist orders against any insured credit union, or any director, officer, committee member, employee, agent or any other person participating in the conduct of the affairs of any insured credit union (Subpart C);

(3) Those held pursuant to section 206(j)(2) of the Act, pertaining to the assessment of civil penalties against any insured credit union, or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of any insured credit union, for the violation of a cease-and-desist order that has become final (Subpart D);

(4) Those held pursuant to section 206(g) of the Act, pertaining to the issuance of orders removing or suspending from office and/or prohibiting from further participation in the credit union's affairs, any director, officer, or committee member of an insured credit union, or any person participating in the conduct of the affairs of such a credit union (Subpart E);

(5) Those held pursuant to sections 120(b) and 207(a) of the Act, pertaining to the suspension or revocation of the charter of any Federal credit union, and the placing of such a credit union into involuntary liquidation (Subpart G) and

(6) Those held pursuant to section 304(e) (3) of the Act, pertaining to the termination of membership in the Central Liquidity Facility, established under Subchapter III of the Act (Subchapter H).

(b) Except as provided in §747.602 of this Part, the provisions of this subpart do not apply to hearings held pursuant to §206(h) of the Act, pertaining to suspension, removal or prohibition action against a person charged with the commission of a crime involving dishonesty or breach of trust as more fully described in Subpart F.

(c) In connection with any proceeding involving an insured State-chartered credit union, or any director, officer, committee member, or other person participating in the conduct of its affairs, the Board will provide the appropriate State supervisory authority with timely notice of its intent to institute the proceeding and the grounds therefor. Unless within such time as the Board deems appropriate in the light of the circumstances of the case (which time will be specified in the notice) satisfactory corrective action is effectuated by action of the State supervisory authority, the Board will proceed as provided herein. No credit union or other party who is the subject of any notice or order issued by the Board under this Part shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

§747.102 Appearance and Practice Before the Administration.

(a) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before the Administration upon filing with the Board a written declaration that he is currently qualified as provided by this paragraph, and is authorized to represent the particular party on whose behalf he acts. Any other person desiring to appear before or transact business with the Administration in a representative capacity may be required to file with the Board a power of attorney showing his authority to act in such capacity, and he may be required to show to the satisfaction of the Board that he has the requisite qualifications. Attorneys and representatives of parties to proceedings shall file a written notice of appearance with the Board or with the Administrative Law Judge designated by the Board.

(b) *Summary suspension.* Contemptuous conduct by any person at an argument before the Board or at the hearing before an Administrative Law Judge shall be ground for exclusion therefrom and suspension for the duration of the argument or hearing.

§747.103 Notice of Hearing.

Whenever a hearing within the scope of this subpart is ordered by the Board, a notice of hearing shall be given by the Board to the party afforded the hearing and to any appropriate State supervisory authority. The notice shall state the time, place, and nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing. It shall be delivered by personal service, by registered or certified mail to the last known address, or by other appropriate means, not later than thirty (30), nor earlier than sixty (60) days before the hearing. The term "party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party; but a person or agency may be admitted for a limited purpose.

§747.104 Answer.

(a) *When required.* In any notice of hearing issued by the Board, the Board may direct the party or parties afforded the hearing to file an answer to the allegations contained in the notice, and any party to any proceeding may file an answer. Except where a different period of not less than 10 days after service of a notice of hearing is specified by the Board, a party directed to file an answer, or a party who elects to file an answer, shall file the same with the Board within 20 days after service upon him of the notice of hearing.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall specifically admit, deny, or state that the party does not have sufficient information to admit or deny each allegation in the notice of hearing. A statement of lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends to deny only a part or a qualification of an allegation, he shall specify so much of it as is true and shall deny only the remainder.

(c) *Admitted allegation.* If a party filing an answer under this section elects not to contest any of the allegations of fact set forth in the notice of hearing, his answer shall consist of a statement that he admits all of the allegations to be true. Such an answer shall constitute a waiver of hearing as to the facts alleged in the notice, and together with the notice will provide a record upon which the Board may issue an appropriate order.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations of the notice of hearing and to authorize the Board to find the facts as alleged in the notice and issue an appropriate order. The Board or the Administrative Law Judge may, for cause shown, permit the filing of a delayed answer after the time for filing the answer has expired.

(e) *Opportunity for informal settlement.* Any interested party may at any time submit to the Board, for consideration, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No such offer or proposal, or counter-offer or proposal shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding. The foregoing provisions of this section shall not preclude settlement of any proceeding through the regular adjudicatory process by the filing of an answer as provided in this section, or by submission of the case to the Administrative Law Judge on a stipulation of facts and an agreed order.

§747.105 Failure to Appear.

Failure of a party to appear at the hearing by a duly authorized representative shall be deemed to be an admission to the facts as alleged and consent to the relief sought.

§747.106 Conduct of Hearings.

(a) *Selection of Administrative Law Judge.* Any hearing within the scope of this subpart shall be held before the Board or an Administrative Law Judge selected by the Office of Administrative Law Judges, Office of Personnel Management, and designated by the Board and, unless otherwise provided in the notice of hearing, shall be conducted as hereinafter provided.

(b) *Authority of Administrative Law Judge.* All hearings governed by this subpart shall be conducted in accordance with the provisions of chapter 5 of Title 5 of the United States Code. The Administrative Law Judge designated by the Board to preside at any such hearing shall have complete charge of the hearing, and he shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings. Except that he shall not have the authority to decide any motion to dismiss or any other motion which results in a final determination on the merits, the Administrative Law Judge shall have all the powers conferred by section 556(c) of Title 5 of the United States Code, including, but not limited to the following:

(1) To administer oaths and affirmations;

(2) To issue subpenas and subpenas duces tecum, as authorized by law, and to revoke, quash, or modify any such subpena;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of issues or for any other proper purpose; and

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adversary proceeding.

(c) *Prehearing conference.* The Administrative Law Judge may, on his own initiative or at the request of any party, direct counsel for all parties to meet with him at a specified time and place prior to the hearing, or to submit suggestions to him in writing, for the purpose of considering any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and of the contents, and authenticity of documents;

(3) Matters of which official notice will be taken; and

(4) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

Such conferences shall, at the request of any party, be recorded and at the conclusion thereof the Administrative Law Judge shall enter in the record an order which recites the results of the conference. The order shall include the Administrative Law Judge's rulings upon matters considered at the conference, together with appropriate directions to the parties, if any; and such order shall control the subsequent course of the proceedings, unless modified at the hearing to prevent manifest injustice. Except as authorized by law, the Administrative Law Judge shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate. No officer, employee or agent engaged in the peformance of investigative or prosecuting functions in any case shall, in that case or a factually related case, participate or advise in the decision of the Administrative Law Judge except as a witness or counsel in the proceedings.

(d) *Attendance at hearings.* A hearing shall ordinarily be private and shall be attended only by the parties, their representatives or counsel, witnesses while testifying, and other persons having an official interest in the proceedings: Provided, however, that on written request by a party or representatives of the Board or on the Board's own motion, the Board, in its discretion and to the extent permitted by law, may permit other persons to attend or may order the hearing to be public.

(e) *Transcript of testimony.* Hearings shall be recorded and transcripts will be available to any party upon payment of the cost thereof, and, in the event the hearing is public, shall be furnished on similar payment to the other interested persons. A copy of the transcript of the testimony taken at any hearing, duly certified by the reporter, together with all exhibits, all papers and requests filed in the proceedings, and any briefs or memoranda of law theretofore filed in the proceeding, shall be filed with the Board, who shall transmit the same to the Administrative Law Judge. The Board shall promptly serve notice upon each of the parties of such filing and transmittal. The Administrative Law Judge shall have authority to rule upon motions to correct the record.

(f) *Order of procedure.* At the time for opening arguments, counsel for the Administration shall argue first, and at the time for closing arguments, counsel for the Administration shall argue last.

(g) *Continuances and changes or extension of time and changes of place of hearing.* Except as otherwise expressly provided by law, the Board may, by the notice of hearing or subsequent order, provide time limits different from those specified in this part, and the Board may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these rules, or with the consent of the party afforded the hearing, change the time and place for beginning any hearing hereunder. The Administrative Law Judge may continue or adjourn a hearing from time to time and, as permitted by law or agreed to by parties, from place to place. Extensions of time for making any filing or performing any act required or allowed to be done within a specified time in the course of a proceeding may be granted by the Administrative Law Judge for good cause shown.

(h) *Call for further evidence, oral argument, briefs, reopening of hearing.* The Administrative Law Judge may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the certification of his recommended decision to the Board. Except as otherwise provided in §747.705(b), the Board shall render its decision within 90 days after the parties have been notified pursuant to §747.114 that the case has been submitted to the Board for final decision, unless within such 90-day period the Board, on its own initiative or for good cause shown, orders that such notice be set aside and the case reopened for further proceedings.

§747.107 Subpenas.

(a) *Issuance.* The Administrative Law Judge, or in the event he is unavailable, the Board shall issue subpenas at the request of any party requiring the attendance of witnesses or the production of documentary evidence at any designated place of hearing; except that where it appears to the Administrative Law Judge or the Board that the subpena may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the party seeking the subpena may be required, as a condition precedent to the issuance of the subpena, to show general relevance and reasonable scope of the testimony or other evidence sought. In the event the Administrative Law Judge or the Board, after consideration of all the circumstances, determines that the subpena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, either may refuse to issue the subpena, or issue it only upon such conditions as fairness requires.

(b) *Motion to quash.* Any person to whom a subpena is directed may, prior to the time specified therein for compliance but in no event more than 5 days after the date of service of such subpena, with notice to the party requesting the subpena, apply to the Administrative Law Judge, or if he is unavailable, to the Board, to revoke, quash, or modify such subpena, accompanying such application with a statement of the reasons therefore.

(c) *Service of subpena.* Service of a subpena upon a person named therein shall be made by delivering a copy of the subpena to such person and by tendering the fees for 1 day's attendance and the mileage as specified in paragraph (d) of this section, except that when a subpena is issued at the instance of the Board, fees and mileage need not be tendered at the time of service of the subpena. If service is made by a U.S. marshal, or his deputy, or an employee of the Administration, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpena. In case of failure to make service, reasons for the failure shall be stated on the original subpena. The original subpena, bearing or accompanied by the required return, affidavit or statement, shall be returned without delay to the issuing authority.

(d) *Attendance of witnesses.* The attendance of witnesses and the production of documents pursuant to a subpena, issued in connection with a hearing provided for in this subpart, may be required from any State or in any territory at any designated place where the hearing is being conducted. Witnesses subpenaed in any proceeding under this subpart shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(e) *Depositions.* The Board or Administrative Law Judge, by subpena or subpena duces tecum, may order evidence to be taken by deposition in any proceeding at any stage thereof. Such depositions may be taken by the Administrative Law Judge or before any person

designated by the Board or Administrative Law Judge and having power to administer oaths. Unless notice is waived, no deposition shall be taken except after at least 5 days' notice to the parties to the proceeding.

(f) *Application and order to take oral deposition.* Any party desiring to take the oral deposition of a witness, in connection with any hearing provided for in this part, shall make application in writing to the Administrative Law Judge or, in the event he is unavailable, to the Board, setting forth the reasons why such depositions should be taken, the name and address of the witness, the matters concerning which the witness is expected to testify, its relevance and the name and address of the persons before whom it is desired the deposition be taken. A copy of such application shall be served upon every other party to the proceeding by the party making such application. Upon showing that (1) the proposed witness will be unable to attend or may be prevented from attending the hearing because of age, sickness, or infirmity, or will otherwise be unavailable at the hearing, (2) his testimony will be material, and (3) the taking of the deposition will not result in any undue burden to any other party or in undue delay of the proceeding, the Administrative Law Judge or the Board may, in his or its discretion, by such subpena or subpena duces tecum, order the oral deposition to be taken. Such subpena will name the witness whose deposition is to be taken and specify the time when, the place where and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is ordered to be taken, need not be the same as those named in the application. Notice of the issuance of such subpena shall be served upon each of the parties a reasonable time, and in no event less than 5 days, in advance of the time fixed for the taking of the deposition.

(g) *Procedure on deposition; objections.* Each witness testifying upon oral deposition shall be duly sworn, and the adverse party shall have the right to cross examine. Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon; but the person taking the deposition shall not have the power to rule upon questions of competency or materiality or relevance of evidence. Failure to object to questions or evidence shall not be deemed a waiver except where the ground of the objection is one which might have been obviated or removed if presented at that time. The questions propounded and the answers thereto, together with all objections made (but not including argument) shall be recorded by the person taking the deposition, or under his direction. The deposition shall be subscribed by the witness, unless the parties by stipulation waived the signing or the witness is ill or cannot be found or refuses to sign, and certifies as a true and complete transcript thereof by the person taking the deposition. If the deposition is not subscribed to by the witness, the person taking the deposition shall state this fact on the record and the reason therefor. Such person shall promptly send the original and two copies of such deposition, together with the original and two copies of all exhibits, by registered mail to the Board unless otherwise directed in the order authorizing the taking of the deposition. Interested parties shall make their own arrangements with the person taking the deposition for copies of the testimony and the exhibits.

(h) *Introduction as evidence.* Subject to appropriate rulings on such objections to questions of evidence as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying (except objections waived under paragraph (g) of this section), the deposition or any part thereof may be read in evidence by any party to the proceeding. Only such part or the whole of a deposition as is received in evidence shall constitute a part of the record of the proceeding upon which a decision may be based.

(i) *Payment of fees.* Witnesses whose oral depositions are taken shall be entitled to the same fees as are paid for like services in the district courts of the United States. Fees of persons taking such depositions and the fees of the reporter shall be paid by the person upon whose application the deposition was taken.

(j) *Judicial enforcement.* Any party to proceedings under this Part may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States Court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subpart, and such courts shall have jurisdiction and power to order and require compliance therewith.

§747.108 Rules of Evidence.

(a) *Evidence.* Every party shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(b) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds relied upon, and the transcript shall not include argument thereon except as ordered, allowed, or requested by the Administrative Law Judge. Rulings on objections and on any other matters shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any ruling shall be considered a waiver of such objection.

(c) *Official Notice.* All matters officially noticed by the Administrative Law Judge shalll appear on the record.

§747.109 Motions.

(a) *In writing.* An application or request for an order or ruling not otherwise specifically provided for in this subpart shall be made by motion. After an Administrative Law Judge has been designated and before the filing with the Board of his recommended decision, such motions shall be addressed to and filed with the Administrative Law Judge. At all other times motions shall be addressed to and filed with the Board. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally upon the record unless the Administrative Law Judge directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the grounds therefor.

(b) *Objections.* Within 5 days after service of any written motion, or within such other period as may be fixed by the Administrative Law Judge or the Board, any party may file a written answer or objection to such motion. The moving party shall have no right to reply, except as permitted by the Administrative Law Judge or the Board. As a matter of discretion, the Administrative Law Judge, or the Board may waive the requirements of this section as to motions for extensions of time, and may rule upon such motions ex parte.

(c) *Oral argument.* No oral argument will be heard on motions except as otherwise directed by the Administrative Law Judge or the Board. Written memoranda or briefs may be filed with motions or answers or objections thereto, stating the points and authorities relied upon in support of the position taken.

(d) *Rulings on motions.* Except as otherwise provided in this part, the Administrative Law Judge shall rule upon all motions properly addressed to him (and upon such other motions as the Board directs) except that if the Administrative Law Judge finds that a prompt decision by the Board on a motion is essential to the proper conduct of the proceeding, he may refer that motion to the Board for decision. The Board shall rule upon all motions properly submitted to it for decision.

(e) *Appeal from rulings on motions.* All motions and answers or objections thereto and rulings thereon shall become a part of the record. Rulings of an Administrative Law Judge on any motion may not be appealed to the Board prior to its consideration of the Administrative Law Judge's recommended decision, findings, and conclusions except by special permission of the Board; but they shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from such rulings of the Administrative Law Judge shall be filed promptly, in writing, and shall briefly state the grounds relied upon. The moving party shall immediately serve a copy thereof on every other party to the proceeding.

(f) *Continuation of hearing.* Unless otherwise ordered by the Administrative Law Judge or the Board, the hearing shall be continued pending the determination of any motion by the Board.

§747.110 Proposed Findings and Conclusions and Recommended Decision.

(a) *Proposed findings and conclusions by parties.* Each party to a hearing shall have a period of 15 days after service of the Board's notice of the filing and transmittal of the record as provided in §747.106(e), or such further time as the Administrative Law Judge for good cause shall determine, to file with the Administrative Law

Judge proposed findings of fact, conclusions of law, and orders which may be accompanied by a brief or memorandum in support thereof. Such proposals shall be supported by citation of those statutes, decisions, and other authorities which may be relevant and by page references to appropriate parts of the record. All such proposals, briefs, and memoranda shall become a part of the record.

(b) *Recommended decision and filing of record.* The Administrative Law Judge shall, within 30 days after the expiration of the time allowed for the filing of proposed findings, conclusions, and order, or within such further time as the Board for good cause shall determine, file with and certify to the Board for decision the entire record of the hearing which shall include his recommended decision, findings of fact, conclusions of law, and proposed order, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing the Board shall serve upon each party to the proceeding a copy of the Administrative Law Judge's recommended decision, findings, conclusion and proposed order. The provisions of this paragraph and §747.111 shall not apply, however, in any case where the hearing was held before the Board.

§747.111 Exceptions.

(a) *Filing.* Within 15 days after service of the recommended decision, findings, conclusions, and proposed order of the Administrative Law Judge, or such further time as the Board for good cause shall determine, any party (other than a party who has not filed an answer in accordance with paragraphs (a) and (d) of §747.104, unless no answer was required of such party by the Board) may file with the Board, exceptions thereto or any part thereof, or to the failure of the Administrative Law Judge to make any recommendation, finding or conclusion, or to the admission or exclusion of evidence, or other ruling of the Administrative Law Judge, supported by such brief as may appear advisable.

(b) *Waiver.* Failure of a party to file exceptions to the recommended decision, findings, conclusions, and proposed order of the Administrative Law Judge or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or to the admission or exclusion of evidence or other ruling of the Administrative Law Judge, within the time prescribed in paragraph (a) of this section, shall be deemed a waiver of objection thereto.

§747.112 Briefs.

(a) *Contents.* All briefs shall be confined to the particular matters in issue. Each exception or proposed finding or conclusion which is briefed shall be supported by a concise argument or by citation of such statutes, decisions or other authorities and by page references to such portions of the record or recommended decision of the Administrative Law Judge as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(b) *Reply briefs.* Reply briefs may be filed with the Board within 10 days after service of briefs and shall be confined to matters in original briefs of opposing parties. Further briefs may be filed only with the permission of the Board.

(c) *Delays.* Briefs not filed on or before the time fixed in this subpart will be received only upon special permission of the Board.

§747.113 Oral Argument before the Board.

Upon its own initiative, or upon the written request of any party made within the time prescribed for the filing of exceptions, a brief in support thereof, or a reply brief, if any, for oral argument on the findings, conclusions, and recommended decision of the Administrative Law Judge, the Board, if it considers that justice will best be served, may order the matter to be set down for oral argument before it. Oral argument before the Board shall be recorded unless otherwise ordered by the Board.

§747.114 Notice of Submission to the Board.

Upon the filing of the record with the Board, and upon the expiration of the time for the filing of exceptions and all briefs, including reply briefs or any further briefs permitted by the Board and upon the hearing of oral argument by the Board if ordered by the Board, the Board shall notify the parties that the case has been submitted to it for final decision.

§747.115 Decision of the Board.

(a) The Board's decision shall be premised upon the factual information developed of record and upon pertinent laws, rules, rulings, policy statements, and official publications of the Administration.

(b) Appropriate members of the staff of the National Credit Union Administration, who are not engaged in the performance of investigative or prosecuting functions in the case, or in a factually related case, may advise and assist the Board in the consideration of the case and in the preparation of appropriate documents for its disposition. Copies of the decision and order of the Board shall be furnished to the parties to the proceedings, the credit union involved, and to the appropriate State supervisory authority in the case of a State-chartered credit union.

§747.116 Filing Papers.

Recommended decision, exceptions, briefs and other papers required to be filed with the Board in any proceeding shall be filed with the National Credit Union Administration Board, National Credit Union Administration, Washington, D.C. 20456. Any such papers may be sent to the Board by mail but must be received in the office of the Board in Washington, D.C., or postmarked by a post office, within the time limit for such filing.

§747.117 Service.

(a) *By the Board.* All documents or papers required to be served by the Board upon any party afforded a hearing shall be served by the Board or its duly authorized representative. Service shall be made by personal service or by registered or certified mail, addressed to the last known address as shown on the records of the Administration, on the attorney or representative of record of each party. If there is no attorney or representative of record, such service shall be made upon the party at the last known address as shown on the records of the Administration. Service may also be made in such other manner reasonably calculated to give actual notice as the Board may otherwise provide.

(b) *By the parties.* Except as otherwise expressly provided in this subpart, all documents or papers filed in a proceeding under this subpart shall be served by the party filing the same upon the attorneys or representatives of record of all other parties to the proceeding, or, if any party is not so represented, then upon such party. Service may be made by personal service or by registered or certified mail addressed to the last known address of the parties, or their attorneys or representatives of record. All such documents or papers shall, when tendered to the Board or Administrative Law Judge for filing, show that such service has been made.

(c) Copies of any notice or order served by the Board upon any State-chartered credit union or any director, officer, or committee member thereof or other person participating in the conduct of its affairs, pursuant to the provisions of this part, shall also be sent to the appropriate State supervisory authority having supervision of such credit union.

§747.118 Copies.

Unless otherwise specifically provided in the notice of hearing, an original and seven copies of all documents and paper required or permitted to be filed or served upon the Board under this subpart, except the transcript of testimony and exhibits, shall be furnished to the Board.

§747.119 Computing Time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday or

legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor such legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is 10 days or less in which event Saturdays, Sundays, and legal holidays shall not be included.

(b) *Service by mail.* Whenever any party has the right or is required to do some act or take some proceeding, within a period of time prescribed in this subpart, after the service upon him of any document or other paper of any kind, and such service is made by mail, 3 days shall be added to the prescribed period from the date when the matter served is deposited in the U.S. mail.

§747.120 Documents in Proceedings Confidential.

Unless and until otherwise ordered by the Board, the notice of hearing, the transcript, the recommended decision of the Administrative Law Judge, exceptions thereto, proposed findings or conclusions, the findings and conclusions of the Board and other papers which are filed in connection with any hearing shall not be made public, and shall be for the confidential use only of the Board, the Administrative Law Judge, the parties and appropriate authorities.

§747.121 Formal Requirements as to Papers Filed.

(a) *Form.* All papers filed under this subpart shall be printed, typewritten, or otherwise reproduced. All copies shall be clear and legible.

(b) *Signature.* The original of all papers filed by a credit union shall be signed by an officer thereof, and if filed by another party shall be signed by said party, or by the duly authorized agent or attorney of the credit union or other party, and in all such cases shall show the signer's address. Counsel for the Administration shall sign the original of all papers filed by him.

(c) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Administration, the name of the party, and the subject of the particular paper.

Subpart B—Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status.

§747.201 Scope.

Under the authority of section 206(b) of the Federal Credit Union Act, the Board may terminate the insured status of an insured credit union upon the grounds set forth therein and enumerated in §747.202. The procedure for terminating the insured status of an insured credit union as therein prescribed will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and Subpart A of this Part.

§747.202 Grounds for Termination of Insurance.

The Board may institute proceedings to terminate the insured status of an insured credit union whenever it determines that an insured credit union (1) is engaging or has engaged in unsafe or unsound practices in conducting its business, (2) is in unsafe or unsound condition to continue as an insured credit union, or (3) is violating or has violated any applicable law, rule, regulation, order, written condition imposed by the Board in response to any application or request of the credit union, or any written agreement entered into with the Board.

§747.203 Notice of Charges.

(a) Whenever the Board determines that grounds for termination of insured status exists, it will, for the purpose of securing correction of errant or illegal conditions, serve a notice of charges upon the concerned credit union. This notice will contain a statement describing the unsafe or unsound practices, condition or the relevant violations.

(b) In the case of an insured State-chartered credit union, the Board shall send a copy of the Notice of Charges to the appropriate State authority, if any, having supervision over the credit union.

§747.204 Notice of Intention to Terminate Insured Status.

Unless correction of the practices, condition, or violations set forth in the Notice of Charges is made within 120 days after service of such statement, or within a shorter period of not less than 20 days after such service as the Board may require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay or as the appropriate State supervisory authority shall require in the case of an insured State-chartered credit union, the Board, if it determines to proceed further, shall give to the credit union not less than 30 days written notice of its intent to terminate the status of the credit union as an insured credit union. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practices or conditions or violations and shall fix a time and place for a hearing thereon which shall be a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or later date is set by the Board at the request of the credit union.

§747.205 Order Terminating Insured Status.

If, upon the record of the hearing held pursuant to §747.204, the Board finds that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time prescribed under §747.204, the Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the Notice.

§747.206 Consent to Termination of Insured Status.

Unless the credit union appears at the hearing designated in the notice of hearing by a duly authorized representative, it will be deemed to have consented to the termination of its status as an insured credit union. In the event the credit union fails to so appear at such hearing,

the Administrative Law Judge shall forthwith report the matter to the Board and the Board may thereupon issue an order terminating the credit union's insured status.

§747.207 Notice of Termination of Insured Status.

Prior to the effective date of the termination of the insured status of an insured credit union under section 206(b) of the Federal Credit Union Act and at such time as the Board shall specify, the credit union shall mail to each member at his last address of record on the books of the credit union, and publish in not less than two issues of a local newspaper of general circulation, notices of the termination of its insured status, and the credit union shall furnish the Administration with proof of publication of such notice. The notice shall be as follows:

§747.208 Duties After Termination.

(a) After the termination of the insured status of any credit union under sections 206(b) of the Federal Credit Union Act, insurance of its member accounts to the extent they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one (1) year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the Board.

(b) The credit union shall continue to pay premiums to the Board during such period and the Board shall have the right to examine the credit union from time to time during the period. The credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union during the one (1) year period. If the credit union is closed for liquidation within this period, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union.

NOTICE

(Date)

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act, will terminate as of the close of business on the _____ day of _____;

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration;

3. Accounts in the credit union on the _____ day of _____, _____, up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the _____ day of _____, _____;

Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)

(Address)

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions.

§747.301 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board with a view to ordering an insured credit union, or any director, officer, committee member, employee, agent or other party participating in the conduct of the affairs of an insured credit union to cease-and-desist from practices and violations described in sections 206(e) and (f) of the Federal Credit Union Act and enumerated in §747.302. The procedures for issuing such orders prescribed in section 206 of the Act will be followed and the hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and Subpart A of this Part.

§747.302 Grounds for Cease-and-Desist Orders.

(a) The Board may institute cease-and-desist proceedings against any insured credit union or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of an insured credit union.

(b) Cease-and-desist action may be taken whenever the Board determines, or has reasonable cause to believe, that one or more of the parties described in §747.302(a)(1) is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the affairs of an insured credit union, or (2) is violating, has violated, or is about to violate any law, rule, regulation, written condition imposed by the Board in response to any application or request of an insured credit union, or any written agreement entered into with the Board.

§747.303 Notice of Charges and Hearing.

Whenever the Board determines to institute cease-and-desist proceedings, it will do so by serving a notice of charges and hearing upon the concerned party. This notice will contain a statement of the facts constituting the alleged unsafe or unsound practices or violation or violations and will fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the credit union, director, officer, committee member, employee, agent, or other person. The hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the Notice of Charges and Hearing, unless an earlier or later date is set by the Board at the request of any party so served. Unless the party or parties appear at the hearing personally or by a duly authorized representative, they will be deemed to have consented to the issuance of the cease-and-desist order.

§747.304 Issuance of Order.

In the event of such consent as referred to in §747.303, or if upon the record made at any hearing referred to in §747.303, the Board finds that any unsafe or unsound practice or any violation specified in the notice of charges has been established, the Board may issue and serve upon the credit union, director, officer, committee member, employee, agent or other person an order to cease and desist from any such practice or violation. The order may, by provisions which may be mandatory or otherwise, require the concerned party or parties to cease and desist from the same and, further, to take affirmative action to correct the conditions resulting from any such practice or violation.

§747.305 Effective Date.

A cease-and-desist order will become effective at the expiration of 30 days after its service (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and will remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§747.306 Temporary Cease-and-Desist Orders.

(a) *Issuance of Order.* Under section 206(f) of the Act, whenever the Board determines that the unsafe or unsound practices or violations or threatened violations specified in the notice of charges referred to in §747.302, or the continuation thereof is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union or is likely to seriously weaken the condition of the credit union or otherwise to seriously prejudice the interests of its insured members prior to the completion of the hearing described in §747.303, the Board may issue a temporary order requiring the concerned credit union, director, officer, committee member, employee, agent or other person to cease and desist from any practice or violation.

(b) *Effective date of temporary order.* A temporary order will become effective upon its service and, unless set aside, limited, or suspended by a court in proceedings authorized under section 206(f)(2) of the Federal Credit Union Act and §747.306(c) of this part, shall remain effective and enforceable pending the completion of the administrative proceedings held pursuant to the notice of charges and until such time as the Board dismisses the charges specified in the notice, or if a cease-and-desist order is issued, until the effective date of any such order.

(c) *Injunctive procedure.*

(1) Within 10 days after service of a temporary cease-and-desist order, the party or parties so served may apply to the U.S. district court for the judicial district wherein the principal office of the credit union is located, or the U.S. District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served under §747.302 and such court shall have jurisdiction to issue such injunction.

(2) In the case of a violation or threatened violation of, or a failure to obey a temporary cease-and-desist order, the Board may apply to the U.S. district court, or the U.S. court of any territory, within the jurisdiction of which the principal office of the credit union is located for an injunction to enforce such order, and, as provided in section 206(f) (3) of the Act, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties.

§747.401 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board pursuant to §206(j)(2) of the Federal Credit Union Act to assess and collect civil penalties of any insured credit union, or any director, officer, committee member, employee, agent or other person participating in the conduct of the affairs of an insured credit union where such a party has violated the terms of any cease-and-desist order that had become final.

§747.402 Grounds for Assessment of Civil Money Penalities.

(a) The Board may assess civil money penalties against any insured credit union, or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of an insured credit union, upon its finding that such a party has violated the terms of any cease-and-desist order issued pursuant to section 206(e) and (f) of the Act and Subpart C of this Part that had become final. As used in this section, the term "has violated" includes, without any limitation, any action (alone or with another or others) for or towards causing, bringing about, participating in, counseling, or aiding and abetting a violation.

(b) The civil penalty cannot exceed $1,000 per day for each day during which the violation continues.

§747.403 Relevant Considerations.

In determining the appropriate amount of the penalty assessed pursuant to §747.402, the Board will take into account the size of financial resources and good faith of the violating party, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

§747.404 Notice of Assessment.

The Board will assess civil money penalties by written notice served upon the party or parties assessed. The notice will state the amount of the penalty, and will contain a statement of law and fact upon which the penalty is based.

§747.405 Period Within Which Penalty is Payable.

The notice of assessment made pursuant to §747.404 will provide that the civil penalty will become payable, and is to be collected, within 90 days of such notice. If the Board finds that in the specific case the purposes of the penalty will be better served if this period is shortened or eliminated, the Board may shorten the period or make the civil penalty payable immediately upon receipt of notice thereof, as the case may be. In such case, the notice of assessment will indicate when the civil penalty will be payable. Notwithstanding any other provision of this or any other section of this subpart, if a party has requested a hearing pursuant to §747.407 in order to challenge a penalty or a finding antecedent to such a penalty, the party will not be required to make actual payment of the penalty until the Board issues a final order following such hearing.

§747.406 Notice of Opportunity for Hearing.

The notice of assessment made pursuant to §747.404 will be accompanied by a further notice to the party that it will be afforded a hearing if within ten days after service of the notice of assessment the party requests one in writing.

The notice of opportunity for a hearing will be accompanied by a description of the hearing procedure.

§747.407 Request for Hearing.

A request for a hearing shall be filed in writing with the Chairman, National Credit Union Administration Board, Washington, D.C. 20456. If a party does not request a hearing in writing within ten days after service of the notice of assessment, it will be deemed to have waived its claim to a hearing, and the notice of assessment will constitute a final and unappealable order.

§747.408 Hearing and Order.

After receiving a request for a hearing pursuant to §747.407, the Board will order a hearing to commence within the next 30 days. The procedures of the Administrative Procedure Act (5 U.S.C. §§554-557) and Subpart A will apply to the hearing. If, on the record made at such hearing, the Board finds that the grounds for the civil money penalty have been established, the Board will issue and cause to be served its final order. Such final order will require the penalty to be paid at the time originally specified in the notice of assessment, or at the time of service of such final order upon the party, whichever is later. In issuing its order the Board may, in its discretion, reduce the amount specified in the notice.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to 206(g) Suspension and Removal Actions.

§747.501 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board to suspend, remove, and/or prohibit from further participation, any director, officer, committee member, or any other person participating in the conduct of the affairs of an insured credit union, upon the grounds set forth in section 206(g) of the Federal Credit Union Act and enumerated in this subpart. The rules and procedures set forth in this subpart are not applicable to suspension, removal, or prohibition proceedings brought upon grounds set forth in section 206(h) of the Federal Credit Union Act and enumerated in Subpart F.

§747.502 Grounds for Removal Order.

(a) The Board may remove any director, officer, or committee member of an insured credit union upon its finding that such a party (1) has violated any applicable law, rule, regulation, or cease-and-desist order which has become final or (2) has engaged or participated in any unsafe or unsound practice in connection with the credit union, or (3) has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as director, officer, or committee member and that the credit union has suffered, or will probably suffer, substantial financial loss or other damage, or that the interests of the credit union's insured members could be seriously prejudiced, by reason of the violation, practice, or breach of fiduciary duty.

(b) The Board may remove any director, officer, or committee member of an insured credit union who the Board finds has, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, evidenced his personal dishonesty or unfitness to continue in his position.

(c) The Board may prohibit any person participating in the conduct of the affairs of an insured credit union from any further participation therein upon its finding that such a party has, by conduct or practice with respect to the insured credit union, another insured credit union, or another business institution which resulted in substantial financial loss or other damage, evidenced his personal dishonesty or unfitness to continue his participation with the insured credit union.

§747.503 Notice of Intent to Remove and/or Prohibit and Notice of Hearing.

Whenever the Board determines that grounds for removal or prohibition action exist, it will serve upon the concerned director, officer, committee member, or other person a notice of intent to remove and/or prohibit and notice of hearing. This notice will contain a statement of the facts constituting the grounds therefor and will fix a time and place at which a hearing will be held thereon. The hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of the notice unless an earlier or a later date is set by the Board at the request of the party concerned, for good cause shown, or at the request of the Attorney General of the United States. Unless the responding party shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of removal and/or prohibition.

§747.504 Issuance of Removal Order and Effective Date.

(a) In the event of such consent referred to in §747.503 or if upon the record made at any such hearing the Board shall find that any of the grounds specified in the notice has been established, the Board may issue such orders of removal from office and/or prohibition from participation in the conduct of the affairs of the credit union as it may deem appropriate.

(b) Any such order shall become effective at the expiration of 30 days after service upon the party concerned (except in the case of an order

issued upon consent which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§747.505 Suspension Actions.

(a) Grounds for suspension and Notice. In respect to any director, officer, or committee member of an insured credit union or any other person referred to in §747.502 (a), (b) or (c), the Board may, if it deems it necessary for the protection of the credit union or the interests of its insured members, by written notice to that effect served upon such a party, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the credit union.

(b) Efffective date of suspension. The suspension and/or prohibition will be effective upon service of the notice thereof and, unless stayed by a court in proceedings authorized by section 206(g)(5) of the Federal Credit Union Act and described in subsection (c) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under §747.502 of this subpart and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director, officer, committee member, or other person, until the effective date of any such order. Copies of any such order shall also be served upon the credit union of which the respondent party is a director, officer, or committee member or in the conduct of whose affairs he has participated.

(c) Stay of suspension or prohibition. Within 10 days after any director, officer, committee member, or other persons has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under section 206(g) (3) of the Federal Credit Union Act and as set forth in this subpart, the concerned party may apply to the U.S. district court for the judicial district in which the principal office of the credit union is located, or the U.S. District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings, and such court shall have jurisdiction to stay such suspension and/or prohibition.

§747.506 Remainder of the Board of Directors.

(a) If at any time, because of the suspension of one or more directors pursuant to this subpart, or pursuant to Subpart F, there shall be on the board of directors of an insured credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum on the board of directors.

(b) In the event all of the directors of an insured credit union are suspended pursuant to this subpart, or pursuant to Subpart F, the Board shall appoint persons to serve temporarily as directors in their place pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office.

(c) Directors appointed temporarily by the Board pursuant to paragraph (b) of this section, shall, within 30 days following their appointment, call a special meeting for the election of new directors, unless during such 30 day period (1) the regular annual meeting is convened, or (2) the suspensions giving rise to the appointment of temporary directors are terminated.

Subpart F—Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged.

§747.601 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board pursuant to section 206(h) of the Federal Credit Union Act to suspend, remove, and/or prohibit from further participation any director, officer, committee member, or other person participating in the conduct of the affairs of an insured credit union when such a party is charged in, or convicted as a result of, any State, Federal or territorial information or indictment, or in any complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which crime is punishable by imprisonment for a term exceeding one year under State or Federal law.

§747.602 Rules of Practice.

Except as otherwise specifically provided in this subpart, the provisions of §747.102 ("Appearance and practice before the Administration"), §747.103 ("Notice of hearing"), §747.119 ("Computing time") and §747.120 ("Documents in proceedings confidential") of Subpart A shall apply to proceedings conducted under this subpart. In addition, the provisions of §747.506 ("Remainder of the board of directors") shall apply to this subpart as noted therein.

§747.603 Notice of Suspension or Prohibition.

Whenever a director, officer, or committee member of an insured credit union or any other person participating in the conduct of the affairs of such credit union, is charged in any State, Federal or territorial information or indictment, or in any complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which crime is punishable by imprisonment for a term exceeding one year under State or Federal law, the Board may, if continued service or participation by the concerned party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such individual, suspend him from office, or prohibit him from further participation in any manner in the affairs of the credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union. This suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of, or until such suspension or prohibition is terminated by the Board.

§747.604 Removal or Permanent Prohibition.

In the event that a judgment of conviction with respect to a crime referred to in §747.603 is entered against a director, officer or committee member of an insured credit union or any other person participating in the conduct of the affairs of such credit union, and at such time as the judgment is not subject to further appellate review, the Board may, if continued service or participation by the individual may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon the individual an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board. A copy of such order will also be served upon such credit union. A finding of not guilty or other disposition of the charge will not preclude the Board from thereafter instituting proceedings to remove such director, committee member, officer, or other person from office or to prohibit further participation in affairs, pursuant to the provisions of section 206(g) of the Federal Credit Union Act and Subpart E.

§747.605 Effectiveness of Suspension or Removal Until Completion of Hearing.

Any notice of suspension or prohibition issued under §747.603 and any order of removal or prohibition issued under §747.604, will be effective upon service on the concerned party and will remain effective and outstanding until the completion of any hearing or appeal authorized under Section 206(h) of the Federal Credit Union Act and this subpart, unless such notice of suspension or order of removal is terminated by the Board.

§747.606 Notice of Hearing.

(a) Any notice of suspension or prohibition issued pursuant to §747.603, and any order of removal or prohibition issued pursuant to §747.604, shall be accompanied by a further notice to the concerned individual that he may within 30 days of service of such notice, request in writing a hearing at which he may present evidence and argument that his continued service to or participation in the conduct of the affairs of the credit union does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair confidence in the credit union. Any notice of the opportunity for a hearing shall be accompanied by a description of the hearing procedure and the criteria to be considered.

(b) A request for a hearing filed pursuant to paragraph (a) above shall state with particularity the relief desired, the grounds therefore, and shall include, when available, supporting evidence. Such petition and supporting evidence shall be filed in writing with the National Credit Union Administration Board, Washington, D.C. 20456.

§747.607 Hearing.

(a) After the receipt of a request for a hearing complying with §747.606, the Board will order a hearing to commence within the next succeeding 30 days in Washington, D.C., or at such other place as is designated by the Board, before a person designated by the Board to conduct such hearings. At the request of the concerned party, the Board may order the hearing to commence at a time more than thirty days after the receipt of the request for such hearing.

(b) The notice of the hearing shall be served by the Board upon the party or parties afforded the hearing and shall set forth the time and place of the hearing and the name and address of the presiding officer.

(c) The subject individual may appear at the hearing personally, through counsel, or personally with counsel. The individual shall have the right to introduce relevant and material written materials (or, at the discretion of the Board, oral testimony), and to present an oral argument before the presiding officer. A member of the staff of the Office of the General Counsel of the National Credit Union Administration may attend the hearing and may participate as a party. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. §§554-557) shall apply to the hearing. The proceedings shall be recorded and a transcript will be furnished to the individual upon request and after the payment of the cost thereof. The Board shall have the discretion to permit the presentation of witnesses, within specified time limits, so long as a list of such witnesses is furnished to the presiding officer ten (10) days prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or the presiding officer. The presiding officer may ask questions of any witness and each party shall have the opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the subject individual or the representative of the Office of the General Counsel, the record shall remain open for a period of five (5) business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

(d) In the course of or in connection with any proceeding under this subpart, the Board or the presiding officer will have the power to administer oaths and affirmations, to take or cause depositions to be taken, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum. If the Board permits the presentation of witnesses, the Board or the presiding officer, may require the attendance of witnesses from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place

where such proceeding is being conducted. Witnesses subpenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States. The Board or the presiding officer may require the production of documents from any place in any such State, territory, or other place.

(e) The presiding officer will make his recommendations to the Board, where possible, within ten (10) business days following the close of the record.

§747.608 Waiver of Hearing; Failure to Request Hearing or Review Based on Written Submissions; Failure to Appear.

(a) The subject individual may, in writing, waive an oral hearing and instead elect to have the matter determined by the Board on the basis of written submissions alone.

(b) Should any concerned party fail to request in writing an oral hearing or consideration based on written submissions alone within thirty (30) days of service of the notice described in §747.606 of this subpart, he will be deemed to have consented to the Board's action.

(c) Unless the concerned party appears at the hearing personally or by duly appointed representative, he will be deemed to have consented to the Board's action.

§747.609 Decision of the Board.

(a) Within sixty (60) days following the hearing, or receipt of the subject individual's written submissions where hearing has been waived pursuant to §747.608, the Board shall notify the director, committee member, officer, or other person whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the decision of the Board, if that decision is adverse to the respondent party. In the case of a decision favorable to the respondent, on the subject of a prior order of removal or prohibition, the Board shall take prompt action to rescind or otherwise modify the order of removal or prohibition.

§747.610 Reconsideration by the Board of Directors.

(a) The subject individual shall have ten (10) business days following receipt of the decision of the Board in which to petition the Board for initial reconsideration.

(b) The subject individual also shall be entitled to petition the Board for reconsideration of its decision any time after the expiration of a twelve-month period from the date of the Board's decision, but no petition for reconsideration may be made within 12 months of a previous petition.

(c) Any petition shall state with particularity the basis for reconsideration, the relief sought, and any exceptions the individual has to the Board's findings. An individual's petition may be accompanied by a memorandum of points and authorities in support of his petition and any supporting documentation the individual may wish to have considered.

(d) No hearing need be granted on such petition for reconsideration. Promptly following receipt of the petition the Board shall render its decision.

§747.611 Relevant Considerations.

In deciding the question of suspension, prohibition, or removal under this subpart the Board will consider the following:

(a) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under State or Federal law, and which involves dishonesty or breach of trust;

(b) Whether the continued presence of the subject individual in his position may pose a threat to the interests of the credit union's members because of the nature and extent of the individual's participation in the affairs of the insured credit union and/or the nature of the offense with the commission of or participation in which the individual has been charged;

(c) Whether there is cause to believe that there may be an erosion of public confidence in the integrity, safety, or soundness of a particular credit union (either generally or in the particular locality in which the credit union is situated) if the subject individual is permitted to remain in his position in an insured credit union;

(d) Whether the individual is covered by the credit union's fidelity bond and, if so, whether the bonding company is likely to revoke the bond, or whether coverage under the bond will be affected adversely as a result of the information, indictment, complaint, or judgment of conviction; and

(e) The Board may consider any other factors which, in the specific case, appear relevant to the decision to continue in effect, rescind, terminate, or modify a suspension, prohibition, or removal order, except that it shall not consider the ultimate question of the guilt or innocence of the subject individual with regard to the crime with which he has been charged.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations.

§747.701 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board pursuant to §§120(b)(1) and 207(a) to suspend or revoke the charter of a Federal credit union, and to place a Federal credit union into involuntary liquidation.

§747.702 Grounds for Suspension or Revocation of Charter and for Involuntary Liquidation.

(a) Grounds in general. The Board may suspend or revoke the charter of any Federal credit union, and place such credit union into involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the credit union has violated any provision of its charter or bylaws or of the Federal Credit Union Act or regulations issued under said Act. Upon its finding that a Federal credit union is bankrupt or insolvent, the Board shall revoke the charter of such credit union, close same for liquidation, and appoint itself as liquidating agent therefor.

(b) Immediate suspension. In any case where the Board determines that a Federal cedit union is insolvent and that immediate action is necessary in order to prevent further dissipation of credit union assets or earnings, or further weakening of the credit union's condition, or to otherwise protect the interests of the credit union's insured members or the National Credit Union Share Insurance Fund, it may order without prior notice, the immediate suspension of the charter of such credit union, and if the circumstances so warrant, may take possession of all books, records, assets, and property of every description of such credit union.

§747.703 Notice of Intent to Suspend or Revoke Charter; Notice of Suspension.

(a) Upon its determination that one or more of the grounds listed in §747.702(a) exists, or that because of conditions described in §747.702(b) immediate suspension of charter is necessary, the Board shall cause to be served upon that credit union a notice of intent to suspend or revoke charter and of intent to place into involuntary liquidation, or a notice of suspension. Such notice shall contain a statement of the facts which constitute the grounds for the action, a recitation of the options available to the credit union under subsection (b), and an explanation of the results that will occur if the credit union fails to exercise said options.

(b) Not later than forty (40) days after the receipt of the notice provided for in subsection (a), the Federal credit union may: (1) file with the Board a statement in writing setting forth the grounds and reasons why its charter should not be suspended or revoked and, why it should not be placed into involuntary liquidation, or (2) in lieu of a written statement, request an oral hearing which shall be conducted in accordance with the procedures set forth in this subpart. This statement or request shall be accompanied by a certified copy of a resolution of the board of directors of the Federal credit union concerned authorizing such statement or request, such certification to be made by the president and secretary of the board.

(c) If the Federal credit union concerned does not exercise either alternative available in subsection (b) within the time required, it shall be deemed to have admitted the facts alleged in the notice and shall be deemed to have consented to the relief sought.

§747.704 Notice of Hearing.

(a) Immediately upon receipt of a request for an oral hearing pursuant to §747.703(b), the Board shall notify, in writing, the Federal credit union making such request of the time, place, and nature of such hearing. Such hearing shall be fixed for a date not earlier than thirty (30) days nor later than sixty (60) days after service of such notice unless an earlier or later date is requested by the Federal credit union concerned and is granted by the Board in its discretion.

(b) Except as provided in §747.705(b) of this subpart, the procedures of the Administrative Procedures Act (5 U.S.C. §§554-557) and Subpart A will apply to the hearing.

(c) Unless the Federal credit union shall appear at such hearing by a duly authorized representative it shall be deemed to have consented to the suspension or revocation of its charter and to the placing of said credit union into involuntary liquidation.

§747.705 Issuance of Order.

(a) In the event of such consent as referred to in §§747.703(c) or 747.704(c), or if upon the record made at any such hearing as referred to in §747.703(b), the Board finds that the charter of the Federal credit union concerned should be suspended or revoked and the credit union closed and placed into involuntary liquidation, it shall cause to be served on such credit union an order directing the suspension or revocation of its charter and, directing that it be closed and placed into involuntary liquidation. Such order shall contain a statement of the findings upon which the order is based. Additionally, the Board shall appoint an agent for the liquidating agent.

(b) The Board shall render its decision and cause such order to be served not later than forty-five (45) days after receipt of consent, or written submissions as the case may be, or in the case of a formal hearing after service or the notice of submission referred to in §747.114.

(c) On the receipt of a copy of the order which provides that the Federal credit union concerned be placed into involuntary liquidation, the officers and directors of that Federal credit union shall immediately deliver to the agent for the liquidating agent possession and control of all books, records, assets, and property of every description of the Federal credit union, and the agent for the liquidating agent shall proceed to convert said assets to cash, collect all debts due to said Federal credit union and to wind up its affairs in accordance with the provisions of the Federal Credit Union Act.

§747.706 Cancellation of Charter.

On the completion of the liquidation and certification by the agent for the liquidating agent that the distribution of the assets of the Federal credit union has been completed, the Board shall cancel the charter of the Federal credit union concerned.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility. (RESERVED)

Part 748

Minimum Security Devices and Procedures

§748.0 Scope.

(a) This Part establishes minimum standards which federally insured credit unions shall comply with in respect to their actions and the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies, to assist in the identification and apprehension of persons who commit such actions, and to provide standards for storing vital records; sets time limits within which federally insured credit unions shall comply with these standards; and provides for the submission of reports with respect to compliance.

(b) It is realized that federally insured credit unions will be of various sizes, from small ones that operate from an officer's home with limited assets to large ones with many millions of dollars of assets that are involved in a complex operation. It is the intent of this regulation to make the security requirements fit the circumstance of the credit union. Accordingly, small federally insured credit unions may be required to have a considerably less elaborate security program as compared to large federally insured credit unions. Therefore, the circumstances of each federally insured credit union will be reviewed on its own merits in determining compliance with each section of this Part. If a federally insured credit union does not believe it can comply with any section of this Part, such credit union shall submit the reasons therefor to the Regional Director for approval or disapproval.

§748.1 Definitions.

Branch includes any branch credit union, branch office, branch agency, additional office, or any branch place of business located in any State of the United States, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, at which member accounts are established or money lent.

Business hours means the time during which an office is open for the normal transaction of business with members of federally insured credit unions.

Office includes the principal office of a federally insured credit union and any branch thereof.

Regional Director means the Regional Director of the National Credit Union Administration in the region where the federally insured credit union is located who is responsible for the supervision of the federally insured credit union's activities for insurance purposes.

Teller station or window means a location in a place of business in which a federally insured credit union's members routinely conduct transactions with that credit union which involve the exchange of funds, including a walkup or drive-in teller's station or window.

§748.2 Designation of Security Officer.

Within 60 days of the effective date of this Part, or within 30 days after the effective date of insurance of a federally insured credit union, whichever is later, the Board of Directors of each such credit union shall designate an officer or other employee of that credit union who shall be charged, subject to the supervision by the credit union's Board of Directors, with responsibility for installation, maintenance, and operation of security devices and for the development and administration of a security program which equals or exceeds the standards prescribed by this Part.

§748.3 Security Devices.

(a) *Installation, maintenance, and operation of appropriate devices.* Within 180 days of the effective date of this Part, or within 90 days after the effective date of insurance of funds, whichever is later, the security officer of each federally insured credit union, under such direction as shall be given him by that credit union's Board of Directors, shall survey the needs for security devices in each of the credit union's offices and shall provide for the installation, maintenance, and operation in each such office of:

(1) A lighting system for illuminating during the hours of darkness the area around the vault or safe if the vault or safe is visible from outside the office;

(2) Tamper-resistant locks such as dead bolt, ring and bar, double cylinder, or similar types on exterior doors and exterior windows designed to be opened;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers, guards, or security personnel of an attempted or perpetrated robbery or burglary; and

(4) Such other devices as the security officer, after seeking the advice of law enforcement officers and any other appropriate source, shall deem to be appropriate for discouraging robberies, burglaries, and larcenies and for assisting in the identification and apprehension of persons who commit such crimes.

(b) *Considerations relevant to determining appropriateness.* For the purpose of subparagraphs (3) and (4) of paragraph (a) of this Section, considerations relative to determining appropriateness include, but are not limited to:

(1) The incidence of crimes against the particular office or financial institutions in the area in which the office is or will be located;

(2) The amount of currency or other valuables exposed to robbery, burglary, or larceny;

(3) The distance of the office from the nearest law enforcement offices, guards, or security personnel and the time required for such personnel to arrive at the office;

(4) The cost of security devices;

(5) Other security measures in effect at the office or within the area, such as the office being located within the compound of a military installation, within the complex of a business or factory which has security, etc.; and

(6) The physical characteristics of the office structure and its surroundings.

(c) *Implementation.* It is appropriate for officers of federally insured credit unions in areas with a high incidence of crime to install more devices and institute more procedures which would not be practicable because of cost for small offices in areas substantially free of crimes against financial institutions. Each federally insured credit union shall consider the appropriateness of installing, maintaining, and operating security devices and where used should give a general level of protection at least equivalent to the standards described in §748.9. In those institutions where security devices are already installed it is not intended that they be replaced but every effort will be made to bring them up to the standards set forth in §748.9. In any case, on the basis of the factors listed in paragraph (b) of this Section or similar ones, where the use of other measures or the decision that technological change allows the use of other measures judged to give equivalent protection, it is decided not to install, maintain, and operate devices at least equivalent to these standards, the federally insured credit union shall preserve in its own records a statement of the reasons for such decision and forward a copy of that statement to the Regional Director. In the case of federally insured State-chartered credit unions, this statement shall be mailed to the Regional Director. If the appropriate State supervisory authority desires, this statement shall be mailed to the Regional Director via the State supervisory authority. In any event, a copy of the statement shall always be sent to the appropriate State supervisory authority.

§748.4 Security Procedures.

(a) *Development and administration.* On or before October 1, 1971, or within 90 days after the effective date of insurance of the credit union by the National Credit Union Administration, whichever is later, each federally insured credit union shall develop and provide for the administration of a security program to protect each of its offices, branches, or places of business from robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such

crimes. The security program shall be reduced to writing, approved by the federally insured credit union's Board of Directors, and retained by that credit union in such form as will readily permit determination of its adequacy and effectiveness, and a copy shall be filed with the Regional Director with the certification required by §748.5 below and with the appendix to this Part pertaining to the Report on Security Measures. In the case of federally insured State-chartered credit unions, these items shall be mailed to the Regional Director. If the appropriate State supervisory authority desires, these items shall be mailed to the Regional Director via the State supervisory authority. In any event, copies of these items shall always be sent to the appropriate State supervisory authority.

(b) *Contents of the security program.* Such security program shall:

(1) Provide for establishing a schedule for the inspection, testing, and servicing of all security devices installed in each office; provide for designating the officer or other employee who shall be responsible for seeing that such devices are inspected, tested, serviced, and kept in good working order and require such officer or other employee to keep a record of such inspections, testings, and servicings;

(2) Require that each office's currency be kept at a reasonable minimum and provide procedures for safely removing excess currency (currency kept on hand overnight should not be in excess of an amount that would be recoverable under the surety bond);

(3) Require that the currency at each teller's station or window be kept at a reasonable minimum and provide procedures for safely removing excess currency and negotiable securities to a locked vault, safe, or other protected place that provides as a minimum the level of protection set forth in §748.7 against the hazard of fire and as set forth in §748.9 against the hazard of burglary and hold-up;

(4) Require that the currency at each teller's station or window or place where funds are disbursed or received include bait money, i.e., used Federal Reserve notes, the denominations, banks of issue, serial numbers, and series years of which are recorded, verified by a second officer or employee, and kept in a safe place;

(5) Require that all currency and negotiable securities be placed in a vault or safe at the earliest time practicable after business hours; that the vault or safe be locked at the earliest practicable time after business hours and be opened at the latest time practicable before business hours. In those cases where the federally insured credit union is so small that it is determined to be economically not feasible to purchase a safe or vault, funds or securities in excess of $500 will not be kept by the credit union but deposited in an authorized depository.

(6) Provide where practicable for designation of a person or persons to open each office or branch and require him or them to inspect the premises to ascertain that no unauthorized persons are present and to signal to the employees that the permises are safe before permitting them to enter;

(7) Provide for designation of a person or persons who will assure that all security devices are turned on and are operating during the periods and at such times as such devices are intended to be used and that all locks on windows, doors, and methods of ingress and egress are properly locked;

(8) Provide for a person (or persons, where practicable) to inspect after the closing hour all areas of each office where currency and negotiable securities are normally handled or stored in order to assure that such currency and negotiable securities have been put away, that no unauthorized persons are present in such areas, and that the vault or safe and all other receptacles with locks are securely locked and secured;

(9) Provide that securities not kept in a safe or vault shall be kept in a safe deposit box which requires two authorized signatures to open in a financial institution;

(10) Provide that armored car service where practicable shall be used in transporting money to and from the bank or armed guards, where practicable, should accompany employees when they transport funds between the federally insured credit union and the bank. Funds should not be transported to the bank by less than two persons.

(11) Provide that windows and doors that are not readily observable from the outside and through which unauthorized entry may be attempted shall, where practicable, be protected by burglary-resistant bars or grills;

(12) Provide that arrangements will be made, if feasible, with local police, internal security guards, or other security personnel to

best copy available

inspect the exterior of the office with reasonable frequency and to be present before opening and just after closing hours;

(13) Provide that the installation of an alarm system which can be activiated by an employee without endangering his life, preferably a silent system connected with the police or a security agency, should be considered and installed where conditions indicate such necessity and it is economically feasible. During hours when the office is closed, an alarm should be considered that can be activated upon unauthorized or forced entry.

(14) Provide that a study be made to determine whether a surveillance system is needed and is practicable, considering such things as photographic recording and monitoring devices. Such systems are not only helpful in identifying and apprehending the burglar or robber but also serve as a deterrent to the planning of a burglary or robbery. Notices of such devices will be prominently displayed.

(15) Provide that employees will be fully instructed as to the procedures and actions to follow during the course of a robbery, including the importance of a good description of the robber. They will be thoroughly familiar with the importance of refraining from any action or reaction that might endanger their lives or the lives of any other employees in the office at the time. (See §748.10)

(16) Provide that employees will be given initial training and periodic retraining in their responsibilities under the security program, including the proper use of any security devices.

(17) Provide that if a federally insured credit union's office is located in a building owned by the employer of the members, consideration will be given to locating the office on an upper floor where practicable.

(18) Provide that consideration will be given to using clear wired glass in doors and windows facing corridors or streets so that persons passing will have a good view of the federally insured credit union's office.

(19) Be cognizant of the fact that the Federal Bureau of Investigation has a decal which states that the FBI has jurisdiction to investigate robberies, burglaries, and larcenies committed against federally insured credit unions. Where the FBI has jurisdiction, arrangements will be made through the local FBI office to acquire these decals and they will be posted in a conspicuous place.

§748.5 Filing of Reports.

(a) *Compliance reports.* Within 180 days of the effective date of this Part or within 90 days after the effective date of insurance of funds, whichever is later, each federally insured credit union shall file with its Regional Director a statement certifying to its compliance with the requirements of this Part. Thereafter such a statement will be filed annually with the Regional Director. The statement shall be dated and signed by the President of the federally insured credit union or other managing officer of that credit union and may be in a form substantially as follows:

> I hereby certify to the best of my knowledge and belief that this credit union has developed and administers a security program that equals or exceeds the standards prescribed by Section 748.4 of the Rules and Regulations; that such security program has been reduced to writing, approved by this credit union's Board of Directors, and retained by this credit union in such form as will readily permit determination of its adequacy and effectiveness; and that this credit union's security officer, after seeking the advice of law enforcement officers, has provided for the installation, maintenance, and operation of security devices, if appropriate, as prescribed by Section 748.3 of the Rules and Regulations in each of the credit union's offices.

In the case of federally insured State-chartered credit unions, this statement shall be mailed to the Regional Director at the same time as the annual payment of its insurance premium as provided in Title II of the Federal Credit Union Act. If the appropriate State supervisory authority desires, this statement shall be mailed to the Regional Director via the State supervisory authority. In any event, a copy of the statement shall always be sent to the appropriate State supervisory authority.

(b) *Crime and catastrophic act reports.* Each time a crime or catastrophic act listed in the appendix is committed or attempted or occurs at an office operated by a federally insured credit union, that credit union shall, within five working days, file a report with the Regional Director in conformity with the requirements of the appendix to this Part. State-chartered credit unions shall, in addition, file one copy of such report with the appropriate State supervisory authority. Three copies of such report shall be filed by each federally insured credit union with

the Regional Director. If all information required in such report is not available within 5 days, then all available information shall be forwarded as a preliminary report within such 5-day period and the remainder forwarded as soon as it is compiled.

(c) Each federally insured credit union shall file such other reports as the Administrator may from time to time require.

§748.6 Corrective Action.

Whenever the Board determines that the security devices or procedures used by a federally insured credit union are deficient in meeting the requirements of this Part or that the requirements of this Part should be varied in the circumstances of a particular office, it may take or require that credit union to take the necessary corrective action. If the Board determines that such corrective action is appropriate or necessary, that credit union will be so notified and will be furnished a statement of what the credit union must do to comply with the requirements of this Part.

§748.7 Storage of Vital Records.

Records considered vital, as defined in the Accounting Manual for Federal Credit Unions, for the continued operation of a federally insured credit union in the event of their loss (such as ledgers, etc.) must be secured in a fire-resistant container or vault prior to the securing of the office or building each day. Fire-resistant vaults used for the protection of federally insured credit unions' records as determined by the Board of Directors shall be constructed in accordance with specifications established by the National Fire Protection Association for a Class 2-hour rating and must comply with any other applicable local fire regulations. As a minimum, fire-resistant vault doors shall be listed with the Underwriters Laboratories as a 2-hour vault door and frame and equipped with an Underwriters Laboratories listed Group 2 combination lock. Fire-resistant containers used for the protection of such records shall meet the minimum specifications established by the Underwriters Laboratories for a UL 1-hour label. For the purpose of certification that fire-resistant vaults or containers meet these standards, a written certification from a contractor, manufacturer, or supplier to the credit union that the equipment equals or exceeds the requirements established above will satisfy the federally insured credit union's compliance with this regulation.

§748.8 Penalty Provision.

Pursuant to Section 205(e)(3) of Public Law 91—468 of 1970, a federally insured credit union which violates any provision of this Part shall be subject to a civil penalty not to exceed $100 for each day of the violation.

§748.9 Minimum Standards for Security Devices.

General: The following minimum standards for security devices should be met if it is determined that the criteria established in Part 748 requires that such security devices be installed.

(a) *Surveillance systems.* Surveillance systems should be equipped with one or more photographic recording, monitoring, or like devices capable of reproducing images of persons in the federally insured credit union's office with sufficient clarity to facilitate (through photographs capable of being enlarged to produce a one-inch vertical head size of persons whose images have been reproduced) the identification and apprehension of robbers or other suspicious characters. The device should be reasonably silent in operation and designed and constructed so that necessary services, repairs, or inspections can be readily made. Any camera used in such a system should be capable of taking at least one picture every two seconds and, if it uses film, should contain enough unexposed film at all times to be capable of operating for not less than three minutes.

(1) *Installation, maintenance, and operation of surveillance systems providing surveillance of other than walkup or drive-in teller stations or windows.*

Surveillance devices for other than walkup or drive-in teller stations or windows should be located so as to produce identifiable images of persons either leaving the federally insured credit union's office or in a position to transact business at each such station or window and should be capable of activation by initiating devices located at each teller's station or window.

(2) *Installation, maintenance, and operation of surveillance systems providing surveillance of walkup or drive-in teller stations or windows.* Surveillance devices for walkup or drive-in teller stations or windows should be located in such a manner as to reproduce identifiable images of persons in a position to transact business at each such station or window and area of such station or window that is vulnerable to robbery or larceny. Such devices should be capable of activation by one or more initiating devices located within or in close proximity to such station or window. Such devices could be omitted in the case of a walkup or drive-in teller's station or window in which the teller is effectively protected by bullet-resistant barrier from persons outside the station or window, but if the teller is vulnerable to larceny or robbery by members of the public who enter the federally insured credit union's office, the teller should have access to a device to activate a surveillance system that covers the area of vulnerability or the exits of that credit union's office.

(b) *Robbery alarm systems.* A robbery alarm should be provided for each federally insured credit union's office at which the police ordinarily can arrive within five minutes after an alarm is activated. Robbery alarm systems should be:

(1) designed to transmit to the police, either directly or through an intermediary, a signal (not detected by unauthorized persons) indicating that a crime against the federally insured credit union's office has occurred or is in progress;

(2) capable of activation by initiating devices located at each teller's station or window (except walkup or drive-in teller's stations or windows in which the teller is effectively protected by a bullet-resistant barrier and effectively isolated from persons, other than fellow employees, inside a federally insured credit union's office of which such station or window may be a part);

(3) safeguarded against accidental transmission of an alarm;

(4) equipped with a visual and audible signal capable of indicating improper functioning of or tampering with the system; and

(5) equipped with an independent source of power (such as a battery) sufficient to assure continuously reliable operation of the system for at least 24 hours in the event of failure of the usual source of power.

(c) *Burglar alarm systems.* Burglar alarm systems should be:

(1) capable of detecting promptly an attack on the outer door, walls, floor, or ceiling of each vault, and each safe not stored in a vault, in which currency, negotiable securities, or similar valuables are stored when the office is closed, and any attempt to move any such safe;

(2) designed to transmit to the police, either directly or through an intermediary, a signal (not detectable by unauthorized persons) indicating that any such attempt is in progress; and designed to activate a loud sounding bell or other device that is audible inside the federally insured credit union's office and for a distance of approximately 500 feet outside that credit union's office;

(3) safeguarded against accidental transmission of an alarm;

(4) equipped with a visual and audible signal capable of indicating improper functioning of or tampering with the system; and

(5) equipped with an independent source of power (such as a battery) sufficient to assure continuously reliable operation of the system for at least 80 hours in the event of failure of the usual source of power.

(d) *Walkup and drive-in teller's stations or windows.* Walkup and drive-in teller's stations or windows contracted for after the effective date of this Part should be constructed in such a manner that tellers are effectively protected by bullet-resistant barriers from robbery or larceny by persons outside such stations or windows. Such barriers should be of glass at least $1^{3}/_{16}$ inches thick,[1] or of material of at least equivalent bullet-resistance. Pass-through devices should be designed and constructed so as not to afford a person outside the station or window a direct line of fire at a person inside the station or window.

[1] It should be emphasized that this thickness is merely bullet-resistant and not bullet-proof.

(e) *Vaults, safes, and night depositories.* Vaults and safes (if not to be stored in a vault) in which currency, negotiable securities, or similar valuables are to be stored when the office is closed, and night depositories, contracted for after the effective date of this Part, should meet or exceed the following standards:

(1) *Vaults.* Vault walls, roof, and floor contracted for after the effective date of this Part, should be made of steel-reinforced concrete, at least 12 inches thick or the equivalent; vault doors should be made of steel or other drill and torch-resistant material, at least 3½ inches thick, and be equipped with a dual combination lock and a time lock and a substantial, lockable daygate; or vaults and vault doors shall be constructed of materials that afford at least equivalent burglary-resistance.

(2) *Safes.* Safes contracted for after the effective date of this Part, should weigh at least 750 pounds empty or be securely anchored to the premises where located. The door should be equipped with a combination lock and with a relocking device that will effectively lock the door if the combination lock is punched. The body should consist of steel, at least 1 inch in thickness, with an ultimate tensile strength of 50,000 pounds per square inch, either cast or fabricated, and be fastened in a manner equal to a continuous ¼-inch penetration weld having an ultimate tensile strength of 50,000 pounds per square inch. One hole not exceeding 3/16-inch diameter may be provided in the body to permit insertion of electrical conductors but should be located so as not to permit a direct view of the door or locking mechanism. The door should be made of steel that is at least 1½ inches thick and at least equivalent in strength to that specified for the body; or safes should be constructed of materials that afford at least equivalent burglary-resistance.

(3) *Night depositories.* Night depositories (excluding envelope drops not used to receive substantial amounts of currency) contracted for after the effective date of this Part, should consist of a receptacle chest having a cast, or welded, steel walls, top and bottom, at least 1 inch thick; a combination locked steel door at least 1½ inches thick; and a chute, made of steel that is at least 1 inch thick, securely bolted or welded to the receptacle and to a depository entrance of strength similar to the chute; or night depositories should be constructed of materials that afford at least equivalent burglary-resistance. The depository entrance should be equipped with a lock. Night depositories should be equipped with a burglar alarm and be designed to protect against the "fishing" of a deposit from the deposit receptacle and to protect against the "trapping" of a deposit for extraction.

Each device mentioned in this section should be installed and regularly inspected, tested, and serviced by competent persons so as to assure realization of its maximum performance capabilities. Activating devices for surveillance systems and robbery alarms should be operable with the least risk of detection by unauthorized persons that can be practicably achieved.

§748.10 Proper Employee Conduct During and After a Robbery

With respect to proper employee conduct during and after a robbery, employees should be instructed—

(a) To avoid actions that might increase danger to themselves or others;

(b) To activate the robbery alarm system and the surveillance system during the robbery, if it appears that such activation can be accomplished safely;

(c) To observe the robber's physical features, voice, accent, mannerisms, dress, the kind of weapon he has, and any other characteristics that would be useful for identification purposes;

(d) That if the robber leaves evidence (such as a note) to try to put it aside and out of sight, if it appears that this can be done safely; retain the evidence, do not handle it unnecessarily, and give it to the police when they arrive; and refrain from touching, and assist in preventing others from touching, articles or places the robber may have touched or evidence he may have left, in order that fingerprints of the robber may be obtained;

(e) To give the robber no more money than the amount he demands and include "bait" money in the amount given;

(f) That if it can be done safely, to observe the direction of the robber's escape and the description and license plate number of the vehicle used, if any;

(g) To telephone the police, if they have not arrived, and the nearest office of the Federal Bureau of Investigation, or inform a designated officer or other employee who has this responsibility that a robbery has been committed;

(h) That if the robber leaves before the police arrive, to assure that a designated officer or other employee waits outside the office, if it is safe to do so, to inform the police when they arrive that the robber has left;

(i) To attempt to determine the names and addresses of other persons who witnessed the robbery or the escape and request them to record their observations or to assist a designated officer or other employee in recording their observations; and

(j) To refrain from discussing the details of the robbery with others before recording the observations respecting the robber's physical features and other characteristics as hereinabove described and the direction of escape and description of vehicles used, if any.

NATIONAL CREDIT UNION ADMINISTRATION
REPORT ON SECURITY MEASURES
Pursuant to the Federal Credit Union Act

Insurance Certificate No. _____

Credit Union Name _____

Address _____

City _____ State _____ Zip _____

☐ Federally Chartered ☐ State Chartered

Does Credit Union Occupy:

(a) ☐ own building (c) ☐ outside rental space

(b) ☐ sponsor's space (d) ☐ other

FINANCIAL:

Assets _____ Loan Balance _____ Share Balance _____

No. of Members _____ Potential Membership _____

President _____

Treasurer/Manager _____

Name of Security Officer _____

Number of Employees: Full Time _____ Part Time _____

LOSSES: (Last 5 Years)

Type	Date	Amount	Covered by Insurance?
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No

I. ARMED GUARD PROTECTION

A. In office during office hours

1. ☐ Yes 2. ☐ No Number _____

B. In office during nonbusiness hours

1. ☐ Yes 2. ☐ No Number _____

II. SURVEILLANCE SYSTEM

A. Type of equipment

1. ☐ Photographic camera No. used _____
2. ☐ Television cameras and recorders No. of TV cameras used _____
3. ☐ Other, specify type and number _____

B. Specifications

1. Size of film, if applicable
   a. ☐ 16mm. or larger
   b. ☐ Other, specify _____
2. Photographing capabilities
   a. ☐ Rapid speed for photographing at _____ frames per minute
   b. ☐ Slow speed for continuous surveillance at _____ frames per hr.

C. Coverage (check all applicable categories)

a. ☐ Exits Number of devices used _____

b. ☐ Teller positions Number of devices used _____

D. Operation

1. Method of activation (check all applicable items)
   a. ☐ Automatic and continuous
   b. ☐ Activating device at each teller position
   c. ☐ Other, specify _____
2. Audibility of system when in operation
   a. ☐ Relatively silent so as not to attract attention
   b. ☐ Readily audible
3. Visible to public view?
   a. ☐ Yes b. ☐ No
4. Public informed through decals or other means of use of surveillance system? a. ☐ Yes b. ☐ No

E. Installation and maintenance

1. Installation by
   a. ☐ Equipment supplier
   b. ☐ Central station alarm service
   c. ☐ Other, specify _____
2. Maintenance by
   a. ☐ Credit Union employee
   b. ☐ Installer
   c. ☐ Other, specify _____

III. ACCESSIBILITY OF LAW ENFORCEMENT OFFICERS
(In developing this information, it may be necessary to consult with local law enforcement officials.)

A. Distance from credit union office to nearest local law enforcement station having jurisdiction. _____

B. Estimate of shortest time within which enforcement officers could be expected to arrive at office after being summoned. _____

IV. BURGLAR ALARM SYSTEMS

A. Installation

1. ☐ By equipment supplier
2. ☐ By central station alarm company
3. ☐ By other, specify _____

B. Signal transmission method

1. ☐ Wires or cables
2. ☐ Wireless equipment (for some or all signals)
3. Means to instantly indicate curcuit failure, malfunction or tampering attempts in system? a. ☐ Yes b. ☐ No

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IV. BURGLAR ALARM SYSTEMS (Continued)

4. Emergency power supply for use in case of failure of regular power supply? a. ☐ Yes b. ☐ No

C. Reporting location for alarms

1. ☐ At central station alarm co. that is in service 24 hours per day
2. ☐ At local law enforcement office that is in service 24 hrs. per day
3. ☐ Other, specify _____

D. Activation of robbery alarms

1. ☐ At teller stations
2. ☐ Elsewhere, specify _____

E. Does burglar alarm system have a loud bell outside the credit union office? 1. ☐ Yes 2. ☐ No

F. Can activating devices be unobtrusively operated?

1. ☐ Yes 2. ☐ No

G. Door-type, window-type, or other intrusion detection alarms

1. ☐ Yes, specify type _____
2. ☐ No
3. Noise-generating device audible outside office?
   a. ☐ Yes b. ☐ No

V. FIRE ALARMS SYSTEMS

A. Installation

1. ☐ By equipment supplier
2. ☐ By central station alarm company
3. ☐ By other, specify _____

B. Signal transmission method

1. ☐ Wires or cables
2. ☐ Wireless equipment (for some or all signals)
3. Emergency power supply for use in case of failure of regular power supply? a. ☐ Yes b. ☐ No

C. Reporting location for alarms

1. ☐ At central station alarm co. that is in service 24 hrs. per day
2. ☐ At local fire station that is in service 24 hrs. per day
3. ☐ Other, specify _____

D. Activation of Fire Alarms

1. ☐ specify where sensors are _____
2. ☐ specify where else can be (manually) activated _____

E. Does fire alarm system have a loud bell outside the credit union office?

1. ☐ Yes 2. ☐ No

F. Type of sensors

1. ☐ Smoke detection
2. ☐ Rate of temperature rise
3. ☐ Products of combustion
4. ☐ Other, specify type _____

G. Other fire protection devices

1. ☐ Extinguishers
2. ☐ Sprinkler systems
3. ☐ Insulated files and cabinets
4. ☐ Other, explain _____

VI. VAULTS AND SAFES

A. Vault construction

1. Material
   a. ☐ Concrete and steel, thickness _____ (in inches)
   b. ☐ Other, specify _____ and thickness _____ (in inches)
2. Thickness of vault doors (in inches) _____

B. Vault equipment

1. Combination dial locks a. ☐ Yes b. ☐ No
2. "Time" lock a. ☐ Yes b. ☐ No
3. Lockable day-gate a. ☐ Yes b. ☐ No
4. Alarm a. ☐ Yes b. ☐ No

C. If vault is visible from outside office, is it in illuminated area?

1. ☐ Yes 2. ☐ No

D. Safes

1. Alarm
   a. ☐ Yes b. ☐ No
2. Type
   a. ☐ Record (Fire) b. ☐ Money (Burglar)
3. Rating
   a. _____

VII. OTHER SECURITY DEVICES

A. Night depository

1. Alarm
   a. ☐ Yes b. ☐ No
2. Construction
   a. ☐ In conformance with standards in Part 748.9 of the National Credit Union Administration Rules and Regulations.
   b. ☐ Other, specify _____

B. Safe deposit boxes

a. ☐ Yes b. ☐ No Number _____

C. Are all exterior doors and windows that can be opened equipped with tamper-resistant locks? a. ☐ Yes b. ☐ No

D. Is a security lighting system used?

a. ☐ Yes, briefly describe _____

b. ☐ No

VII. OTHER SECURITY DEVICES (Continued)

E. Is there a program and a schedule for periodic inspection, testing, and servicing of all security devices? a. ☐ Yes b. ☐ No

What is the testing frequency? _____

F. Is there a program for training and periodic retraining regarding the security programs? a. ☐ Yes b. ☐ No

What is the meeting frequency? _____

G. Is your security program committed to writing?

a. ☐ Yes b. ☐ No

What changes were made during the past year? _____

_____

_____

H. Is your credit union using grating and/or steel bars on windows?

a. ☐ Yes b. ☐ No

I. Is your credit union using a member identification system?

a. ☐ Yes b. ☐ No

Please describe _____

_____

J. Other than listed above, is your credit union using any security devices to protect credit union employees? a. ☐ Yes b. ☐ No

Please list _____

_____

_____

VIII. SECURITY PROGRAM

A. Briefly describe your credit union's security program. All steps taken to minimize robberies, burglaries and larcenies should be noted. If additional space is required use additional page.

1. Security Devices

a. Inspection, Testing and Servicing

Comments _____

_____

_____

b. Activating daily

Comments _____

_____

_____

c. Surveillance system

Comments _____

_____

_____

d. Alarm system

Comments _____

_____

_____

_____

2. Currency

a. Amount on hand and removal of excess

Comments _____

_____

_____

b. Teller's Station and removal to vault

Comments _____

_____

_____

c. Bait money

Comments _____

_____

_____

d. Overnight Safekeeping - Vault

Comments _____

_____

_____

e. Safe deposit box

Comments _____

_____

_____

f. Transportation of funds

Comments _____

_____

_____

3. Inspections

a. Opening inspection of office

Comments _____

_____

_____

b. Closing inspection of office

Comments _____

_____

_____

c. Inspection of exterior of office

Comments _____

_____

_____

4. Robbery - procedures and actions of employees

Comments _____

_____

_____

_____

SECURITY PROGRAM (Continued)

5. Office in sponsor's building - location of credit union office

Comments _____

_____

_____

6. Glass in doors and windows facing corridors or streets

Comments _____

_____

_____

7. Windows and doors - burglary resistant bars or grills

Comments _____

_____

_____

8. Posting of FBI decals

Comments _____

_____

_____

9. Training Program

Comments _____

_____

_____

_____

STATEMENT OF COMPLIANCE

I hereby certify to the best of my knowledge and belief that this credit union has developed and administers a security program that equals or exceeds the standards prescribed by Section 748.4 of the National Credit Union Administration Rules and Regulations; that such security program has been reduced to writing, approved by this credit union's board of directors, and retained by this credit union in such form as will readily permit determination of its adequacy and effectiveness; and that this credit union's security officer, after seeking the advice of law enforcement officers, has provided for the installation, maintenance, and operation of security devices, if appropriate, as prescribed by Section 748.3 of the National Credit Union Administration Rules and Regulations in each of the credit union's offices.

Signature _____

Name (type) _____

Title _____

NATIONAL CREDIT UNION ADMINISTRATION

REPORT OF CRIME OR CATASTROPHIC ACT

Insurance Certificate No. _____

1. Name and address of head office: _____

2. If crime being reported occurred at a branch office, give name & address: _____

3. Type of crime or catastrophic act
   a. ☐ Robbery b. ☐ Burglary c. ☐ Non-employee larceny
   d. ☐ Embezzlement e. ☐ Fire
   f. ☐ Other, specify _____
4. Date of loss _____ 19____
5. Day of week _____
6. Time of day. (If actual not known, estimate) _____
7. Amount of loss:
   a. Currency loss . . . . . $ _____
   b. Securities loss . . . . . $ _____
   c. Damage to credit union property (May be estimate) . . $ _____
   d. Other, specify . . . . . $ _____
   Total Loss . . . . . $ _____

IF CRIME OF ROBBERY HAS BEEN PERPETRATED OR ATTEMPTED, ANSWER THIS SECTION

8. Number of robbers participating in crime _____
9. Weapons:
   a. ☐ Robbers had weapons or it appeared they may have had weapons.
      Specify kind _____
   b. ☐ There was no evidence of weapons.
   c. ☐ Other intimidation was used. Specify _____
10. Were robbers wearing masks or otherwise disguised?
    a. ☐ No.
    b. ☐ Yes, Indicate how _____
11. Was a description of the robbers obtained and recorded?
    a. ☐ Yes.
    b. ☐ No. Why? _____
12. Was a description and/or license number of vehicle(s) obtained?
    a. ☐ Yes.
    b. ☐ No. Why? _____
13. Estimated minutes between beginning and end of robbery _____
14. Modus Operandi:
    a. ☐ Robber(s) passed a note to teller demanding money.
    b. ☐ Robber(s) vocally demanded money.
    c. ☐ Robber(s) subdued employees and took money from containers.
    d. ☐ Other, specify _____
15. Harm to persons:
    a. ☐ Neither employees nor members were physically harmed.
    b. ☐ Persons were harmed. Give details _____
16. A hostage or threat of holding a hostage was used:
    a. ☐ No
    b. ☐ Yes, give details _____
17. Was cash or valuables taken from other than teller drawers?
    a. ☐ No
    b. ☐ Yes. Specify _____
18. Was "bait" money given out or taken during the robbery and was the identification of this money furnished to the law enforcement officers?
    a. ☐ Yes
    b. ☐ No. Why? _____
19. Was the cash contained in the teller drawer(s) within the maximum permitted by the credit union's security program?
    a. ☐ Yes
    b. ☐ No. Why? _____
20. Cameras (or other surveillance device)
    a. ☐ Camera(s) recorded useful pictures during this robbery.
    b. ☐ Camera(s) did not record useful picture during this robbery.
       Why? _____
21. Robbery alarm:
    a. ☐ Alarm was effective during this robbery. How? _____
    b. ☐ Alarm was not effective during this robbery. Why? _____
22. Robber left note or other item which was retained and preserved for use of enforcement officers.
    a. ☐ Yes. What? _____
    b. ☐ No. Explain if necessary. _____
23. Was conduct and performance of employees in conformance with the credit union's security procedure?
    a. ☐ Yes
    b. ☐ No. Explain _____

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IF CRIME OF BURGLARY HAS BEEN PERPETRATED OR ATTEMPTED ANSWER THIS SECTION

24. How did burglars gain entrance to the premises?
    a. ☐ Break-in. Where and how? _____
    b. ☐ Other, specify _____
25. Vault:
    a. ☐ No apparent attempt was made to gain access to vault.
    b. ☐ Vault wall, floor or ceiling was penetrated or attempted. How?
    _____
    c. ☐ Vault door was opened or penetrated. How?
    d. ☐ Other; specify _____
26. Were the lights turned on?
    a. ☐ Yes
    b. ☐ No. Explain _____
27. Were safety deposit boxes broken into or opened?
    a. ☐ No
    b. ☐ Yes. Indicate extent and how _____
    _____
28. Money safe:
    a. ☐ No apparent attempt made to gain access to contents.
    b. ☐ A penetration or an attempted penetration of safe was made.
    How? _____
    c. ☐ Safe door opened or an attempt made to open. How? _____
    _____
    d. ☐ Other, specify _____
29. Night depository:
    a. ☐ No attempt was made to gain access to contents.
    b. ☐ Contents taken or attempted by "Fishing" or "Trapping"
    methods. How, if known? _____
    c. ☐ Night depository penetrated or access door opened. Explain
    _____
    d. ☐ Other, specify _____
30. Burglary alarms:
    a. ☐ Alarms were of value in connection with this crime. How?
    _____
    b. ☐ Alarms were not of value in connection with this crime. Why?
    _____
31. Estimated length of time during which burglary was being committed.
    _____

IF CRIME OF NON-EMPLOYEE LARCENY HAS BEEN PERPETRATED OR ATTEMPTED ANSWER THIS SECTION

32. Modus Operandi of larceny:
    a. ☐ Money or valuables left exposed where thief had access. Explain.
    _____
    b. ☐ Theft by trick or pretext. Explain. _____
    c. ☐ Other, specify _____

IF CRIME OF EMBEZZLEMENT OR MYSTERIOUS DISAPPEARANCE HAS BEEN PERPETRATED OR ATTEMPTED ANSWER THIS SECTION

33. Modus Operandi of Act:
    a. ☐ Money or valuables left exposed where thief had access. Explain.
    _____
    b. ☐ Theft by trick or pretext. Explain. _____
    _____
    c. ☐ Other, specify _____

IF LOSS BY CATASTROPHIC ACT HAS OCCURRED ANSWER THIS SECTION

34. Cause: _____
    a. Type of Damage: ☐ Fire ☐ Wind ☐ Smoke ☐ Water ☐ Other
    Explain _____
    b. Items damaged _____
    _____

ALL CREDIT UNIONS ANSWER THIS SECTION

35. Length of time after beginning of crime/catastrophic act when call for help was transmitted to appropriate law enforcement agency
    _____.
36. Length of time after beginning of crime before first law enforcement personnel arrived at the credit union _____.
37. Did law enforcement personnel arrive at credit union office before violators departed?
    a. ☐ Yes
    b. ☐ No
38. Arrests of violators:
    a. ☐ None have been arrested as of the date of this report.
    b. ☐ Some or all arrested before they escaped from the office.
    c. ☐ Some or all arrested subsequent to leaving the office.
39. Would improvements in protection facilities or employee performance be helpful in preventing or handling any future similar occurances?
    a. ☐ No
    b. ☐ Yes. Indicate what and any plans the credit union has to take corrective action _____
40. Set forth below any information about the crime or the protection measures that is not adequately covered previously: (Use additional pages and/or furnish photographs or sketches if necessary to completely describe the crime being reported.)

Signature _____

Name (type) _____

Title _____

Date _____

Part 749

Records Preservation Program

§749.0 Scope.

(a) This part establishes the minimum requirements with which all federally insured credit unions shall comply in a records preservation program of off-site storage for duplicate vital records which will be used for reconstruction purposes in the event of a catastrophe. Storage of duplicate vital records above the minimums set forth below may be undertaken by any federally insured credit union.

(b) This regulation prescribes the duplicate vital records which shall be stored, the frequency of storage, and sets time limits within which federally insured credit unions shall comply.

§749.1 Definitions.

(a) "Catastrophe" means any act which incapacitates a credit union's ability to operate because vital records have been destroyed or made useless, making it impossible to carry on operations.

(b) "Credit Union" means a Federal or State credit union whose members' shares and deposits are insured by the National Credit Union Administration Board.

(c) "EDP" means an electronic data processing system which is used to maintain the members' share and loan ledgers.

(d) "Hard copy" means any duplicate records other than those which are on microfilm or magnetic tape.

(e) "Magnetic tape" means a thin plastic tape mounted on reels which receives and stores magnetic impressions of information.

(f) "Microfilm" means a film containing photographs of data from vital records.

(g) "Sufficiently removed" means an off-site location selected by the board of directors far enough from the credit union to avoid a simultaneous loss of both the credit union records and the records it stores at the Vital Records Center from a single catastrophe such as a flood, hurricane, earthquake, etc.

(h) "Quarterly" means any 3-month period.

(i) "Reconstruction" means rebuilding the credit union's books and records utilizing information from dupliate vital records stored in an off-site location.

(j) "Records preservation program" means a program for identifying vital records, storing duplicate copies thereof in an off-site facility, and making them available for reconstruction in the event of a catastrophe.

(k) "Vital Records Center" is the off-site location where the credit union's duplicate vital records are stored.

(l) "Record date" means the effective date of the vital records that will be stored.

§749.2 Implementation.

(a) The treasurer of the credit union, subject to the general direction and control of the board of directors, is responsible for developing, maintaining, and operating an off-site records preservation program which equals or exceeds the requirements of this regulation. However, the responsibility for an off-site records preservation program may be delegated by the treasurer, subject to the approval of the board of directors, to the person who manages the day-to-day operations of the credit union.

(b) Any storage center may be selected as a Vital Records Center provided the center is sufficiently removed from the location of the credit union.

(c) The records preservation program must be developed within 4 months of the effective date of this regulation or 4 months after the effective date of the credit union's share insurance certificate, whichever is later. The treasurer shall have the initial set of duplicate vital records at the Vital Records Center not later than 6 months from the effective date of this regulation, or

not later than 6 months after the effective date of the credit union's share insurance certificate, whichever is later. Thereafter the treasurer of a credit union using EDP facilities shall prepare and send duplicate vital records to the Vital Records Center on a quarterly basis to be mailed no later than the 30th day of the following month. The treasurer of each credit union which is not using EDP facilities to maintain its members' share and/or deposit and loan balances shall prepare and send duplicate vital records to the Vital Records Center on a quarterly basis to be mailed by the 30th day of the following month.

(d) The treasurer shall maintain a record, to be known as the records preservation log, of the duplicate vital records sent to the Vital Records Center. The log shall contain a description of the records sent to the center, the date they were sent, and the address of the center. The treasurer should sign and date the log each time the records have been sent to the center. The supervisory committee shall review this log at least quarterly.

§749.3 Vital records to be stored.

Duplicates of at least the records described in this section will be prepared and sent to the Vital Records Center in accordance with the schedule described in this regulation. Duplicates of the most recent month-end records will be used to commence the program. A magnetic tape or microfilm which contains at least the same information as the vital records may be substituted for any of the following records:

(a) A listing of the members' share and/or deposit and loan balances as of the record date. This list shall be handwritten or typewritten and in columnar form.

(1) Member's Account Number: That is, the number assigned by the credit union to the account. If the credit union uses another number (payroll number, badge number, etc.) for day-to-day operations, the credit union may choose which number is to be used.

(2) Share and/or Deposit Balance: This will include balances of regular and special share and deposit accounts, and balances of installment payments on U.S. bonds.

(3) Loan Balance: If more than one loan for a borrower is outstanding, each balance shall be listed separately.

(i) Credit unions are encouraged to also include in columnar form the account name and address of all owners, trustees, and/or beneficiaries, etc. Because of the possible workload involved, listing of account names and addresses is optional.

(ii) Instead of a handwritten or typewritten listing of members' share and/or deposit and loan balances, an adding machine or accounting machine tape, showing the balances identified by account numbers, may be stored.

(b) A financial and statistical report as of the record date. The report shall include at least a list of all asset and liability accounts as of the record date. The reverse side of the form will be used to record significant data about the credit union. This data will include the names and addresses of the credit union's banks, location of safe-deposit boxes and other places where records are stored, breakdown of pertinent other asset accounts, and a list of insurance policies such as fire, casualty, life savings and borrowers' protection, surety bond, etc., with the names and addresses of the insurers. There shall be attached to the financial and statistical report a detailed listing of all investments. Should a majority of the listed investments remain constant, it will not be necessary for a new list to be included with each financial and statistical report. An update of the initial list will suffice, provided such update accurately reflects the status of the credit union's investments.

(c) Credit Unions Utilizing EDP—An insured credit union which maintains its members' share and/or deposit and loan ledgers on a data processing system, if the computer center is sufficiently removed from the credit union, shall be deemed to have met the requirements of this regulation regarding the storage of members' share and/or deposit and loan balances.

§749.4 Storage service provided by Administration.

In order to comply with this regulation, insured credit unions may choose to participate in the Administration's records preservation program at no cost for storage. To participate in this program, insured credit unions shall follow the instructions outlined below:

(a) Credit unions may store hard copy, magnetic tape, and microfilm records.

(b) Credit unions shall use preprinted envelopes or labels which are provided by the storage facility each time records are received for storage. Credit unions desiring to use the storage facilities provided by the Administration should contact the storage facility directly to obtain envelopes and labels for their initial submission of materials to be stored.

(c) Credit unions shall fill out all required information on the appropriate mailing envelope or label. Federal credit unions shall furnish charter number; insured State credit unions shall furnish insurance certificate number.

(d) Credit unions which desire to store records permanently shall so note (in large red letters) on the envelope or mailing label provided. If records are not marked "Permanent," except for magnetic tape, they will be destroyed when replacement records are received. Unmarked magnetic tape will be returned to said credit union annually for reuse.

(e) All duplicate records shall be packaged securely for mailing.

(f) Specific information for:

(1) *Hard copy records.* Material shall be no larger than 8½'' x 11'' so that envelope will fit into the designated storage drawer. If material is too bulky to fit into the envelope, the material should be wrapped securely with the envelope, address side up, placed on top of the package and tied for mailing. Envelopes will not be opened by the storage center.

(2) *Microfilm.* Place the microfilm inside the container in which the film is returned after developing. Microfilm will be filed in a storage tray with only the top visible; therefore, affix to the top of the container the "Microfilm or Magnetic Tape Records" label furnished. Fold the label where indicated and affix to the container so that it is positioned on two sides.

(3) *Magnetic tape.* Prepare in same manner as microfilm, affixing label without folding.

(4) *Mailing.* Mail directly to the Administration's storage location at:

Underground Vaults & Storage, Inc.,
Post Office Box 1723,
Hutchinson, KS 67501

(g) Release of records to credit unions—in the event of a local emergency, records will be released directly from the storage center to the credit union by written request signed by any one of the authorized officials whose signature appears on the envelope or mailing label.

(h) In the event of a national emergency (only) the authorized official's written request for release of records should be addressed to one of the following sources in the order of priority listed:

(1) Regional Office of the National Credit Union Administration.
(2) Washington Office of the National Credit Union Administration.
(3) Underground Vaults & Storage, Inc., Post Office Box 1723, Hutchinson, KS 67501.

Part 750

Tort Claims Against The Government

Subpart A—General.

§750.1 Scope of regulations.

The regulations in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. sections 2671-2680, accruing on or after January 18, 1967, for money damages against the United States for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the National Credit Union Administration while acting within the scope of his office of employment.

Subpart B—Procedures.

§750.2 Administrative claim; when presented; place of filing.

(a) For purposes of the regulations in this part, a claim shall be deemed to have been presented when the National Credit Union Administration receives, at a place designated in paragraph (c) of this section, an executed Standard Form 95 or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to the National Credit Union Administration but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to the National Credit Union Administration as of the date that the claim is received by the National Credit Union Administration. A claim mistakenly addressed to or filed with the National Credit Union Administration shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final action by the Office of General Counsel, National Credit Union Administration or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the National Credit Union Administration shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of an amendment.

(c) Forms may be obtained and claims may be filed with the regional office of the National Credit Union Administration having jurisdiction over the employee involved in the accident or incident, or with the Office of General Counsel, National Credit Union Administration, Washington, D.C. 20456.

§750.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject matter of the claim, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§750.4 Administrative claims; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing the cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birthdates, kinship, and marital status of the decedent's survivors, including those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts or payments for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a bond claim based on personal injury, the claimant may be required to submit the following evidence or information: (1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of the treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical and/or mental examination by a physician employed or designated by the National Credit Union Administration. A copy or report of the examining physician shall be made available to the claimant upon the claimant's written request provided that claimant has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the National Credit Union Administration any other physician's reports previously or thereafter made of the physical or mental condition which is the subject of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from his employment, whether he is a full or part time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for damages to or loss of property, real or personal, the claimant may be required to submit the following information or evidence:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on the responsibility of the United States for the injury to or loss of property or the damages claimed.

(d) *Time limit.* All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary for a determination of his claim within 3 months after a request therefor has been mailed to his last known address may be deemed an abandonment of the claim. The claim may be thereupon disallowed.

§750.5 Investigation, examination, and determination of claims.

When a claim is received, the constituent agency out of whose activities the claim arose shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent

material, and a recommendation based on the merits of the case, with regard to the allowance or disallowance of the claim, to the Office of General Counsel, National Credit Union Administration to whom authority has been delegated to adjust, determine, compromise and settle all claims hereunder.

§750.6 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the action of the National Credit Union Administration, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period after the date of mailing, by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the National Credit Union Administration for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the National Credit Union Administration shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) to bring suit shall not accrue until 6 months after the filing of a request for reconsideration. Final National Credit Union Administration action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

§750.7 Payment of approved claims.

(a) Upon allowance of his claim, claimant or his duly authorized agent shall sign the voucher for payment, Standard Form 1145, before payment is made.

(b) When the claimant is represented by an attorney, the voucher for payment (S.F. 1145) shall designate both the claimant and his attorney as "payees." The check shall be delivered to the attorney whose address shall appear on the voucher.

§750.8 Release.

Acceptance by the claimant, his agent or legal representative, of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§750.9 Penalties.

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than $10,000 or to imprisonment of not more than 5 years, or both (18 U.S.C. 287-1001), and, in addition, to a forfeiture of $2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 231).

§750.10 Limitation on National Credit Union Administration's authority.

(a) An award, compromise or settlement of a claim hereunder in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice when, in the opinion of the National Credit Union Administration:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the National Credit Union Administration is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised or settled only after consultation with the Department of Justice when it is learned that the United States or any employee, agent or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

Part 761

Operational Procedures For Share Draft Programs; Federally Insured State Chartered Credit Unions

§761.0 Scope

This Part sets forth the procedures necessary for insured credit unions to implement and operate share draft programs.

§761.1 Definitions

(a) Share draft account means an account from which the holder is authorized to withdraw shares by means of a negotiable or transferable instrument or other order or the equivalent of such account, under state law, as determined by the Board.

(b) Insured credit union means any federally insured state chartered credit union.

§761.2 Authority

(a) Insured credit unions may offer share draft accounts consistent with the requirements of this Part.

(b) Any insured credit union that offers share draft accounts must comply with applicable substantive and procedural rules governing the implementation and operation of such accounts as may be promulgated by the State. In the absence of State law authorizing share draft accounts, §701.35 of this Chapter is applicable, to the extent it involves share draft accounts, except to the extent that any requirement set forth in §701.35 conflicts with State law.

community is not participating in the National Flood Insurance Program at the time such assistance would be approved (unless such approval is granted within one year from the date your community was identified by the Secretary of the Department of Housing and Urban Development as being flood prone). This assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of the amount of your flood insurances.

☐(b) *Notice in nonparticipating community*

The improved real estate or mobile home securing your loan is or will be located in a community that is not now participating in the National Flood Insurance Program. This means that you are not eligible for Federal flood insurance. In the event that your property is damaged by flooding in a federally-declared disaster, Federal disaster relief assistance will not be available (unless approval for such assistance is granted within one year from the date your community was identified by the Secretary of the Department of Housing and Urban Development as being flood prone). In other words, Federal flood disaster relief assistance will be available only if, at the time such assistance would be approved, your community is participating in the National Flood Insurance Program, or approval for such assistance is granted within one year from the date your community was identified as being flood prone.

(3) STATEMENT OF THE MEMBER-BORROWER

I, _____ a member of the _____ Credit Union, hereby acknowledge that on the date indicated below I have received a Notice To Borrower of Special Flood Hazards, indicating that the property securing my loan is in an area identified as having special flood hazards, and a Notice to Borrower About Federal Flood Disaster Assistance, indicating whether such assistance will or will not be available for such property.

Dated: _____

_____

[Signature and address of member-borrower.]

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The National Credit Union Administration's Manual of Rules and Regulations (NCUA 8006) has been revised to include all revisions to date. We are furnishing one copy to each federal and federally insured credit union. Any additional copies shall be requested from Superintendent of Documents. A new subscription entitles the subscriber to the basic manual dated July/1980 and changes as they are issued. All previous revisions (Changes 1-44) have been incorporated into this new basic manual. Subscriptions are available by submitting an order blank below, along with check to Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. (Make checks payable to Superintendent of Documents.)

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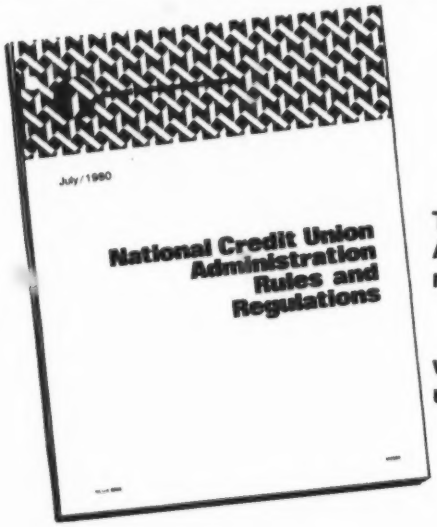

NATIONAL CREDIT UNION ADMINISTRATION RULES AND REGULATIONS

This manual contains all regulations issued by the National Credit Union Administration and all recent amendments to the revisions of these regulations.

These regulations are applicable to all Federal credit unions and, where indicated, to all federally insured credit unions, i.e., Federal credit unions and federally insured state chartered credit unions.

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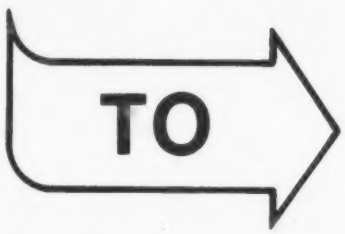

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